

**The Draft Constitution
Or
The Necessary Evidences for it**

Part1

**This book has been issued by
*Hizb ut-Tahrir***

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or
the Necessary Evidences for it**

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(General Rules, The System of Ruling, The Social System)

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

﴿ وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ ۖ فَاحْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ ۚ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ مِنَ الْحَقِّ ۚ لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا ۚ وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَٰكِن لِّيَبْلُوَكُمْ فِي مَا آتَاكُمْ ۚ فَاسْتَبِقُوا الْخَيْرَاتِ ۚ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ ﴿٤٨﴾ وَأِنْ أَحْكَم بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ ۚ فَإِنْ تَوَلَّوْا فَاعْلَمُوا أَنَّنَا يُرِيدُ اللَّهُ أَنْ يُصِيبَهُمْ بِبَعْضِ ذُنُوبِهِمْ ۗ وَإِنَّ كَثِيرًا مِّنَ النَّاسِ لَفَاسِقُونَ ﴿٤٩﴾ أَفَحُكْمَ

الْجَاهِلِيَّةِ يَبْغُونَ ۚ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا لِّقَوْمٍ يُوقِنُونَ ﴿٥٠﴾ ﴾ [المائدة]

“And We have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth. To each of you We prescribed a law and a method. Had Allah willed, He would have made you one nation [united in religion], but [He intended] to test you in what He has given you; so race to [all that is] good. To Allah is your return all together, and He will [then] inform you concerning that over which you used to differ. (48) And judge, [O Muhammad], between them by

what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you. And if they turn away - then know that Allah only intends to afflict them with some of their [own] sins. And indeed, many among the people are defiantly disobedient. (49) Then is it the judgement of [the time of] ignorance they desire? But who is better than Allah in judgement for a people who are certain [in faith]. (50)".

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General Rules

Article 1

The Islamic belief (*Aqeedah*) constitutes the foundation of the state. Hence, nothing is permitted to exist within its entity, its structure or its accountability or any other aspect connected to it, unless the Islamic '*Aqeedah* is its basis. At the same time, the Islamic '*Aqeedah* acts as the basis of the constitution and *Shari'ah* laws; thus, nothing related to the constitution or to the laws is permitted to exist unless it emanates from the Islamic '*Aqeedah*.

The state comes into being by the emergence of new ideas upon which it is established. The authority (the governing of people's affairs and the management of their issues) in the state changes when the new ideas change, since if these ideas turned into concepts (i.e. if their meaning was perceived and their credibility was established), they would influence man's behaviour. This behaviour would then proceed according to these concepts. Thus, man's viewpoint about life changes, and according to its change, his viewpoint towards the interests also changes. The authority is simply the guardianship of these interests and the supervision of their management; thus the viewpoint about life is the basis upon which the state is built and it is the basis upon which the authority is established. However, the viewpoint about life is generated by a specific thought about life. Hence, this thought about life becomes the basis of the state and the basis of the authority.

Since the specific thought about life is embodied in a host of concepts, criteria and convictions, this host of concepts, criteria and convictions is considered a basis. The authority looks after

peoples' affairs and supervises the management of their interests according to this host of concepts, criteria and convictions. Therefore, the basis is a host of thoughts and not just one single idea. It is this host of thoughts in its entirety that generated the viewpoint about life, and consequently the viewpoint towards the interests was established and the authority set about managing them according to this viewpoint. Therefore, the state was defined as being an executive entity for a host of concepts, criteria and convictions that a group of people had adopted.

This is regarding the state from the fact that it is a state i.e. from the fact that this state is the authority that looks after the interests of people and supervises the management of these interests.

However, this host of thoughts upon which the state is founded i.e. the host of concepts, criteria and convictions could either be built upon a fundamental thought or not built upon a fundamental thought. If it were built upon a fundamental thought, it would be solidly built with strong pillars and a firm entity; since it would rest upon a fundamental foundation. This is so because the fundamental thought is the thought that has no other thought behind it, and that is the intellectual '*Aqeedah*'. In such a case, the state would be built upon an intellectual '*Aqeedah*'. On the other hand, if the state were not built upon a fundamental thought, this would ease its destruction and it would not be difficult to demolish its entity and then usurp its authority. This is because it has not been built upon one intellectual '*Aqeedah*' upon which the state was established. Therefore, it is essential that in order for the state to be a strong entity, it must be established upon an intellectual '*Aqeedah*' from which ideas that the state was founded upon emanate i.e. an intellectual '*Aqeedah*' from which the host of concepts, criteria and convictions that represent the idea of the state regarding life emanate and consequently the viewpoint of this state towards life and this is what produces its viewpoint towards the interests.

The Islamic State is built solely upon the Islamic '*Aqeedah* because the host of concepts, criteria and convictions which the *Ummah* (collective of Muslims) has adopted emanate solely from an intellectual '*Aqeedah*. The *Ummah* has first of all adopted this '*Aqeedah* and embraced it as a conclusive '*Aqeedah* based on decisive evidence. Hence, this '*Aqeedah* was its comprehensive idea about life and accordingly its viewpoint about life was shaped and based upon it and its viewpoint towards the interests was derived from it. The *Ummah* also took the host of concepts, criteria and convictions from it and ,therefore, the Islamic '*Aqeedah* is the basis of the Islamic State.

Additionally, the Messenger of Allah ﷺ established the Islamic State upon a specific basis; ,therefore, this very basis must be the basis of the Islamic State in every era and in every location. When the Messenger of Allah ﷺ established the authority in Madinah and assumed the rule over it, he established it on the basis of the Islamic '*Aqeedah* from the very first day and the verses of legislation had not been revealed yet. Hence, the Messenger of Allah ﷺ made the *Shahadah* (testimony) of “***There is no true god but Allah and Muhammad is the Messenger of Allah***” as the basis of the Muslims’ life and of the relationships between people as well as the basis for removing grievances and settling disputes. In other words, it was the basis of all aspects of life and the basis of authority and government. He ﷺ did not stop at that; rather, He (swt) also legislated for *Jihad* and made it an obligation upon the Muslims in order to carry this '*Aqeedah* to all people. Abu Dawud reported on the authority of Abu Hurayrah that the Messenger of Allah ﷺ said:

«أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللَّهِ وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّ الْإِسْلَامِ، وَحِسَابُهُمْ عَلَى اللَّهِ»

“I have been commanded (by Allah) to fight people until they testify that there is no true god except Allah, and that

Muhammad is the Messenger of Allah, and perform Salat and pay Zakat. If they do so, they will have protection of their blood and property from me except when justified by Islam, and then account is left to Allah.” (Agreed upon, text used from Bukhari)

The Messenger of Allah ﷺ also made the protection of the continued presence of the 'Aqeedah as a basis for the state an obligation upon the Muslims and he ﷺ ordered the Muslims to brandish the sword and to fight if the flagrant *Kufr* (disbelief) were to become apparent; in other words, if the 'Aqeedah ceased to be the basis of authority and rule. The Messenger of Allah ﷺ was asked about the tyrant rulers “the most evil of the leaders”: ***“Do we challenge them with the sword?”*** He ﷺ replied

«لا، مَا أَقَامُوا فِيكُمُ الصَّلَاةَ»

“No, as long as they continue to establish prayer amongst you.” (Muslim), and he ﷺ made the *Bay'a* (pledge of allegiance to the ruler) based on the Muslims' obedience to the people in authority unless the Muslims witness a flagrant *Kufr*. In the narration of Auf Bin Malik regarding the evil leaders

«قِيلَ: يَا رَسُولَ اللَّهِ، أَفَلَا نُنَابِذُهُم بِالسَّيْفِ؟ فَقَالَ: لا، مَا أَقَامُوا فِيكُمُ

الصَّلَاةَ»

“It was said O Messenger of Allah – do we not challenge them with the sword? And he ﷺ replied: “No as long as they establish the prayer” (Muslim). And 'Ubadah B. Samit said in the agreed upon narration regarding the *Bay'a*

«وَأَنْ لَا نُنَازِعَ الْأَمْرَ أَهْلَهُ إِلَّا أَنْ تَرَوْا كُفْرًا بَوَاحًا»

“and that we would not dispute about rule with the people in authority unless we witness evident enfidelity (flagrant Kufr)” and in the narration of Al-Tabarani, the wording was:

«كُفْرًا صُرَاحًا»

“explicit Kufr”. And in a narration by Ibn Hibban in his Sahih collection, the wording was:

«إِلَّا أَنْ تَكُونَ مَعْصِيَةُ اللَّهِ بَوَاحًا»

“unless the disobedience to Allah is flagrant”. All of this indicates that the basis of the state is the Islamic 'Aqeedah, since the Messenger of Allah ﷺ established the authority upon it, ordered the brandishing of the sword in order to maintain it as a basis for the authority and he also ordered *Jihad* for its sake.

The first article of the constitution was drafted based on the previously mentioned grounds. This article prohibits the state from having any concept, conviction or criterion that does not emanate from the Islamic 'Aqeedah. To have the Islamic 'Aqeedah as a nominal basis for the state would not be sufficient; rather, this basis should be reflected in every aspect related to the State's existence and in every minor or major issue. Hence, it is forbidden for the state to have any concept about life or about ruling unless it emanates from the Islamic 'Aqeedah. The state would not tolerate any concept not emanating from this 'Aqeedah. Therefore, it would not tolerate the concept of democracy to be adopted within the state because it does not emanate from the Islamic 'Aqeedah and because the Islamic *Aqidah* contradicts with the concepts which emanate from it. Additionally, the concept of nationalism would not be allowed to have any consideration whatsoever because it does not emanate from the Islamic 'Aqeedah and because the concepts which emanate from the Islamic 'Aqeedah abhor it, prohibit it and outline its danger. Likewise, the concept of patriotism should not have any

existence, for it does not emanate from the Islamic '*Aqeedah* and because it contradicts with the concepts that emanate from the Islamic '*Aqeedah*. Furthermore, the apparatus of the State would not have any ministerial departments according to the democratic understanding and nor should there be in its government any imperial, monarchical or republican concepts for these do not emanate from the '*Aqeedah* of Islam and they contradict with the concepts emanating from it. Furthermore, it is categorically forbidden for individuals, movements or groups to account the Islamic State on other than the basis of the Islamic '*Aqeedah*. Hence, such type of accounting that is based upon other than the Islamic '*Aqeedah* would be prohibited and the establishment of movements and groups on other than the basis of the Islamic '*Aqeedah* would be prohibited. The fact that the Islamic '*Aqeedah* acts as the basis for the State makes all of this binding upon the State itself and makes it incumbent upon the citizens over which it rules. This is since its life, in its capacity as a state, as well as the life of every matter originating from it in its capacity as a state, and every action linked to it in its capacity as a state, and every relationship established with it in its quality as a state, must have as its basis the '*Aqeedah* of the State, that is the Islamic '*Aqeedah*.

As for the second issue in the article, its evidence is reflected in the fact that the constitution is the fundamental law (*Qanun Al-Asaasi*) of the State; thus, it is a law, and the law itself is the order of the authority. Allah (swt) ordered the ruler to rule by what He (swt) revealed to the Messenger of Allah ﷺ and described the one who rules by other than what Allah (swt) has revealed as a disbeliever if he believed in what he ruled by and believed in the unsuitability of what Allah (swt) revealed to His Messenger ﷺ. He (swt) described the ruler who rules by other than what He (swt) revealed but did not believe in it as '*Aassi* (disobedient). This indicates that belief in Allah (swt) and His Messenger ﷺ must be the basis of the orders of the ruler; that is, the basis of the laws and the basis of the constitution. As for the command of Allah (swt) to the ruler to rule by what He (swt)

revealed, in other words, by the *Shari'ah* rules, this is established in the Book and the *Sunnah*. Allah (swt) says,

﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ﴾

“But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves.” (TMQ 4:65) and says,

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ﴾

“And judge, [O Muhammad], between them by what Allah has revealed.” (TMQ 5:49).

Allah (swt) has confined the State’s legislation to what He had revealed and He warned against ruling by other than it. He (swt) says,

﴿وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ﴾

“And whoever does not judge by what Allah has revealed - then it is those who are the disbelievers.” (TMQ 5:44). Also, the Messenger of Allah ﷺ said in an agreed upon *Hadith*,

«مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ فِيهِ فَهُوَ رَدٌّ»

“Whoever introduces into our matter (Islam) something that is not in it, then it is rejected” (Agreed upon, text from Bukhari), and in the narration in Muslim

«ما ليس منه»

“something that is not from it”, and in the narration from Ibn Hazm in *Al-Muhalla* and Ibn ‘Abd Al-Barr in *Al-Tamhid*

«كُلُّ عَمَلٍ لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ»

“Every action which is not based upon our command, it is rejected”. This indicates that the legislation of the State must be confined to what emanates from the Islamic '*Aqeedah*'; these are the *Shari'ah* rules which we certainly believe that Allah (swt) has revealed to the Messenger of Allah ﷺ, whether their revelation were explicit; by stating that it is the rule of Allah (swt) and it is reflected in the Book, the *Sunnah* or the *Sahabah* (companions of the Prophet) unanimously consented that it is the rule of Allah (swt), or whether their revelation was implicit; by saying this is an indication of the rule of Allah (swt) taken by way of analogy whose '*Illah* (reason) is a *Shari'ah* '*Illah*. This is why the second issue has been drafted in the article.

In addition, since the actions of the worshippers must be confined to the address of the Legislator (swt), their governing should ,therefore, be from Allah (swt), and the Islamic *Shari'ah* came to address all the actions of people and all of their relationships, whether these relationships were with Allah (swt), with themselves or with other people. Hence, there is no place in Islam for people to enact laws from themselves in order to govern their relations for they are restricted to the laws of *Shari'ah*. Allah (swt) says

﴿وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا﴾

“And whatever the Messenger has given you - take; and what he has forbidden you - refrain from.” (TMQ 59:7). He (swt) also says:

﴿وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ﴾

“It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, that they should [thereafter] have any choice about their affair.” (TMQ 33:36). The Messenger of Allah ﷺ said:

«إِنَّ اللَّهَ تَعَالَى فَرَضَ فَرَائِضَ فَلَا تُضَيِّعُوهَا، وَحَدَّ حُدُودًا فَلَا تَعْتَدُوهَا، وَحَرَّمَ أَشْيَاءَ فَلَا تَنْتَهِكُوهَا،»

“Allah, the Exalted, has laid down certain duties which you should not neglect, and has put certain limits which you should not transgress, and has forbidden some things, so don’t violate them.” (extracted by Al-Daraqutni from Abi Tha’labah, and confirmed as *Hasan* by Al-Nawawi in *Al-Riyadh Al-Salihin*). He ﷺ also said:

«مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ»

“Whoever introduces into our matter (Islam) something that is not in it, then it is rejected” (Agreed upon, through 'Aisha (ra) and the wording is from Muslim).

Therefore, it is Allah (swt) who legislated the rules, not the ruler, and it is He (swt) who obliged people and obliged the ruler to adhere to them in their relations and in their actions, restricted them to these rules and prohibited them from following anything else. Due to this, there is no scope for man to lay down laws to govern peoples’ relations and there is no place for the ruler to force people or to give them the choice to follow principles and rules laid down by man to govern their relations.

Article 2

***Dar Al-Islam* (Islamic Abode) is the territory where the rules of Islam are implemented and its security is upheld by Islam. *Dar Al-Kufr* (abode of disbelief) is the territory where the rules of Kufr are implemented or its security is upheld by other than the security of Islam.**

Dar has several meanings:Linguistically: “abode”, such as His (swt) words:

﴿حَسَفْنَا بِهِ وَبِدَارِهِ الْأَرْضَ﴾

“And We caused the earth to swallow him and his home.” (TMQ 28:81) and “way-station”, and every place that a people settle is their *Dar*. Such as His words:

﴿فَأَخَذَتْهُمُ الرَّجْفَةُ فَأَصْبَحُوا فِي دَارِهِمْ جَنُثِمِينَ﴾

“So the earthquake seized them, and they became within their home [corpses] fallen prone.” (TMQ 7:91), and it means: “city”. Sibawayh stated: “This *Dar* is a beautiful city and “abode and place” such as His words:

﴿وَلَنِعَمَ دَارُ الْمُتَّقِينَ﴾

“And how excellent is the home of the righteous.” (TMQ 16:30)”. In the same manner, it metaphorically means “tribe”, such as the narration of Abu Hamid Al-Sa’adi in Bukhari from the Messenger ﷺ who said:

«إِنَّ خَيْرَ دُورِ الْأَنْصَارِ دَارُ بَنِي النَّجَّارِ...».

“Truly, the worthiest settlements of the Ansar are those of Banu Najjar.. ”

And *Dar* can be adjoined to the names of things such as His (swt) words

﴿سَأُورِيكُمْ دَارَ الْفَاسِقِينَ﴾

“I will show you the home of the defiantly disobedient.” (TMQ 7:145),

﴿وَلَنِعَمَ دَارُ الْمُتَّقِينَ﴾

“And how excellent is the home of the righteous.” (TMQ 16:30),

﴿فَعَقَرُوهَا فَقَالَ تَمَتَّعُوا فِي دَارِكُمْ ثَلَاثَةَ أَيَّامٍ ۖ ذَٰلِكَ وَعَدٌ غَيْرُ

مَكْذُوبٍ﴾

“But they hamstrung her, so he said, "Enjoy yourselves in your homes for three days. That is a promise not to be denied.” (TMQ 11:65), and His (swt) words:

﴿وَأَوْرَثَكُمْ أَرْضَهُمْ وَدِيَارَهُمْ وَأَمْوَالَهُمْ﴾

“And He caused you to inherit their land and their homes and their properties.” (TMQ 33:27). And similarly in the narration of Buraydah in Muslim where the Messenger of Allah ﷺ said,

«... ثُمَّ ادْعُهُمْ إِلَى التَّحَوُّلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَاجِرِينَ»

“...Then invite them to move from their territory to that of the emigrants (Muhajirin)” and the narration of Salima Bin Nufail from Ahmad that he ﷺ said:

«أَلَا إِنَّ عَقْرَ دَارِ الْمُؤْمِنِينَ الشَّامُ».

“the worthiest of the believers’ abode is as-Sham”

And it could be adjoined to meanings such as His (swt) words:

﴿وَأَحْلُوا قَوْمَهُمْ دَارَ الْبَوَارِ﴾

“Have you not considered those who exchanged the favor of Allah for disbelief and settled their people [in] the home of ruin?” (TMQ 14:28). And His words:

﴿الَّذِي أَحَلَّنَا دَارَ الْمَقَامَةِ مِنْ فَضْلِهِ﴾

“He who has settled us in the home of duration out of His bounty.” (TMQ 35:35). And in the narration of Ali (ra) from Ibn Asakir with a *Hasan Sahih* chain, and in Tirmidhi: The Messenger of Allah ﷺ said to me:

«رَحِمَ اللَّهُ أَبَا بَكْرٍ زَوْجَنِي ابْنَتُهُ وَحَمَلَنِي إِلَى دَارِ الْهَجْرَةِ»

“May Allah have mercy upon Abu Bakr, he married his daughter to me and carried me to the land (abode) of migration (Dar-Al-Hijrah)”. And the narration of Ibn Abbas in Daraqutni saying: The Messenger of Allah ﷺ said:

«إِذَا خَرَجَ الْعَبْدُ مِنْ دَارِ الشِّرْكِ قَبْلَ سَيِّدِهِ فَهُوَ حُرٌّ، وَإِذَا خَرَجَ مِنْ بَعْدِهِ رُدَّ إِلَيْهِ. وَإِذَا خَرَجَتِ الْمَرْأَةُ مِنْ دَارِ الشِّرْكِ قَبْلَ زَوْجِهَا تَزَوَّجَتْ مَنْ شَاءَتْ، وَإِذَا خَرَجَتْ مِنْ بَعْدِهِ رُدَّتْ إِلَيْهِ»

“If the slave leaves the abode (land) of Shirk (Dar-Al-Shirk) before his master, then he is free, and if he leaves after him, then he is returned to him, and if a woman leaves the abode (land) of Shirk before her husband, she can marry whom she pleases, and if she leaves after him, then she is returned to him.”

And the *Shari’ah* adjoined the term *Dar* to two words from meanings – being: Islam and *Shirk*. Tabarani has a version of the previously mentioned narration of Salima Bin Nufail in the Musnad Al-Shamiyin with the words

«أَلَا إِنَّ عُمْقَرِ دَارِ الْإِسْلَامِ الشَّامُ»

“the worthiest of the believers’ abode (land) is as-Sham”. So, the word *Dar* here is added to Islam. And likewise, Al-Mawardi narrated in Al-Ahkam Al-Sultaniyya and in Al-Hawi Al-Kabir that the Messenger of Allah ﷺ said

«مَنْعَتْ دَارُ الْإِسْلَامِ مَا فِيهَا، وَأَبَاحَتْ دَارُ الشِّرْكِ مَا فِيهَا»

“The land of Islam (Dar-Al-Islam) has prohibited whatever in it, and the land of polytheism (Dar-Al-Shirk) has permitted whatever in it.” in respect to the sanctity of blood and wealth in the abode of Islam...except by its right in agreement with the rules of the *Shari’ah*, and with respect to the absence of sanctity of the abode of *Shirk* (the abode of war “*Dar Al-Harb*”) in the situation of actual war, as in the rules regarding fighting and booty....in agreement with the rules of the *Shari’ah*. This division encompasses the whole world, so there is not a part from it which falls outside of either the abode of Islam (*Dar Al-Islam*) or the abode of *Shirk*, or in other words, the abode of Kufr or abode of war (*Dar Al-Shirk, Dar Al-Kufr, Dar Al-Harb*).

The abode is considered an abode of Islam if it fulfils two conditions:

Firstly: that the security is upheld by the Muslims, according to the evidence that he ﷺ said to his companions in Makkah

«إِنَّ اللَّهَ عَزَّ وَجَلَّ جَعَلَ لَكُمْ إِخْوَانًا وَدَارًا تَأْمُنُونَ بِهَا»

“Truly, Allah has made brothers to you anda land (an abode) for you to be safe in”. This abode is the *Dar Al-Hijrah* mentioned in the narration of ‘Ali already mentioned from Ibn ‘Asakir, and in the narration of 'Aisha (ra) in Al-Bukhari in which the Messenger of Allah ﷺ said:

«قَدْ أُرِيتُ دَارَ هِجْرَتِكُمْ»

“I have been shown the land (abode) of your emigration”. And the evidence that he ﷺ and his companions did not emigrate to Madinah until he ﷺ was sure about the presence of protection and security; Al-Hafiz said in *Al-Fateh*, Bayhaqi narrated through a strong chain from Al-Sha’bi and Al-Tabarani connected it from the narration of Abu Musa Al-Ansari who said:

«أَنْطَلَقَ رَسُولُ اللَّهِ ﷺ وَمَعَهُ الْعَبَّاسُ عَمُّهُ إِلَى سَعِينَ مِنَ الْأَنْصَارِ عِنْدَ الْعَقَبَةِ، فَقَالَ لَهُ أَبُو أُمَامَةَ - يَعْنِي أَسْعَدُ بْنُ زُرَّارَةَ - سَلْ يَا مُحَمَّدُ لِرَبِّكَ وَلِنَفْسِكَ مَا شِئْتَ، ثُمَّ أَحَبِّرْنَا مَا لَنَا مِنَ الثَّوَابِ. قَالَ: أَسْأَلُكُمْ لِرَبِّي أَنْ تَعْبُدُوهُ وَلَا تُشْرِكُوا بِهِ شَيْئًا، وَأَسْأَلُكُمْ لِنَفْسِي وَلِأَصْحَابِي أَنْ تُؤْوُوا وَتَنْصُرُونَا وَتَمْنَعُونَا مِمَّا تَمْنَعُونَ مِنْهُ أَنْفُسَكُمْ. قَالُوا: فَمَا لَنَا؟ قَالَ: الْجَنَّةُ. قَالُوا: ذَلِكَ لَكَ»

“The Messenger of Allah ﷺ set off with his uncle Al-‘Abbas to meet seventy of the Ansar at Al-‘Aqabah, and Abu Umama said to him – Asad Bin Zurara – O Muhammad ask for your Lord and yourself whatever you want, then he informed us of what reward we will have. He said: I ask you for my Lord, to worship Him and do not associate anything else with Him, and I ask you for myself and my companions to accommodate us, and support us, and protect us from what you protect yourselves. They said: What is for us? He ﷺ said: Paradise. They said: What you asked for is yours”.

And the evidence related by Ahmad from Ka’ab Bin M’alik through a *Sahih* chain, that the Messenger of Allah ﷺ said:

«أَبَايِعُكُمْ عَلَى أَنْ تَمْنَعُونِي مِمَّا تَمْنَعُونَ مِنْهُ نِسَاءَكُمْ وَأَبْنَاءَكُمْ قَالَ فَأَخَذَ الْبَرَاءُ بْنُ مَعْرُورٍ بِيَدِهِ ثُمَّ قَالَ نَعَمْ وَالَّذِي بَعَثَكَ بِالْحَقِّ لَنَمْنَعَنَّكَ مِمَّا نَمْنَعُ مِنْهُ أُرْرْنَا فَبَايَعَنَا يَا رَسُولَ اللَّهِ ﷺ فَتَحْنُ أَهْلُ الْحُرُوبِ وَأَهْلُ الْحَلَقَةِ وَرَثَتُهَا كَابِرًا عَنْ كَابِرٍ»

“I pledge to you that you protect me from that which you protect your women and children from. So Al-Baraa Bin Ma’ror took him by his hand and said: Yes, by the One who sent you with the Truth, we will most certainly protect you from that which we protect our people, and so give us the pledge- oh Messenger of Allah ﷺ, we are people of wars and weaponry, which we have inherited from our forefathers”. And in a Sahih

narration by Ahmad from Jaber that he ﷺ said in the pledge of ‘Aqabah

«... وَعَلَى أَنْ تَنْصُرُونِي فَتَمْنَعُونِي إِذَا قَدِمْتُ عَلَيْكُمْ مِمَّا تَمْنَعُونَ مِنْهُ أَنْفُسَكُمْ وَأَزْوَاجَكُمْ وَأَبْنَاءَكُمْ، وَلَكُمْ الْجَنَّةُ...»

“...and to give support to me and protect me from whatever you protect yourselves, your wives and your children (when I come to you), and (if you do that) your reward is Paradise”. And in the *Dala'il Al-Nabuwa* by Al-Bayhaqi, with a strong, good chain from ‘Ubadah Bin Samit who said

«وَعَلَى أَنْ تَنْصُرَ رَسُولَ اللَّهِ ﷺ إِذَا قَدِمَ عَلَيْنَا يَثْرِبَ مِمَّا نَمْنَعُ أَنْفُسَنَا وَأَزْوَاجَنَا وَأَبْنَاءَنَا وَلَنَا الْجَنَّةُ...»

“And to give support to the Messenger of Allah ﷺ from that which we protect ourselves, our wives and our children (when He arrives to us at Yathrib), and we will attain Paradise”.

The Prophet ﷺ refused to emigrate to any place which did not have security, power and protection. Al-Bayhaqi narrated through a *Hasan* chain from ‘Ali that the Messenger of Allah ﷺ said to the Shayban b. Tha’labah tribe:

«مَا أَسَأْتُمْ فِي الرَّدِّ إِذْ أَفْصَحْتُمْ بِالصِّدْقِ، وَإِنَّ دِينَ اللَّهِ لَنْ يَنْصُرَهُ إِلَّا مَنْ حَاطَهُ مِنْ جَمِيعِ جَوَانِبِهِ»

“You have not replied badly since you expressed the truth; the Deen of Allah is not given support (succor) except when who can help it –help it from all sides”. This was after they had offered to support him with respect to the Arabs while excluding the Persians.

Secondly: That the rules of Islam are implemented therein. This is from the evidence of Al-Bukhari from Ubada Bin Samit who said:

«دَعَانَا النَّبِيُّ ﷺ فَبَايَعَنَاهُ، فَقَالَ فِيمَا أَخَذَ عَلَيْنَا أَنْ بَايَعَنَا عَلَى السَّمْعِ وَالطَّاعَةِ فِي مَنْشَطِنَا وَمَكْرَهِنَا، وَعُسْرِنَا وَيُسْرِنَا، وَأَثَرَةٍ عَلَيْنَا، وَأَنْ لَا نُنَازِعَ الْأَمْرَ أَهْلَهُ إِلَّا أَنْ تَرَوْا كُفْرًا بَوَاحًا عِنْدَكُمْ مِنَ اللَّهِ فِيهِ بُرْهَانٌ»

*“The Prophet called us and we gave him the Pledge of allegiance for Islam, and among the conditions on which he took the Pledge from us, was that we were to listen and obey (the orders) both at the time when we were active and at the time when we were tired, and at our difficult time and at our ease and to be obedient to the ruler and give him his right even if he did not give us our right, and not to fight against him unless we noticed him having open Kufr (disbelief) for which we would have a proof with us from Allah”. And listening to and obeying the Messenger of Allah ﷺ is with regards to his orders and prohibitions, in other words, in respect to the implementation of laws. Another evidence is what Ahmad narrated, Ibn Hibban in his *Sahih* collection and Abu ‘Ubayd in *Al-Amwal* by ‘Abd Allah b. Amr from the Prophet ﷺ who said:*

«وَالْهَجْرَةُ هَجْرَتَانِ هَجْرَةُ الْحَاضِرِ وَالْبَادِي فَأَمَّا الْبَادِي فَيُطِيعُ إِذَا أُمِرَ وَيُجِيبُ إِذَا دُعِيَ وَأَمَّا الْحَاضِرُ فَأَعْظُمُهُمَا بَلِيَّةٌ وَأَعْظُمُهُمَا أَجْرًا»

“There are two kinds of emigration, the emigration of the town dweller and the emigration of the Bedouin. As for the Bedouin, when he is called (to fight in Jihad) he must respond, and he must obey when he is commanded, and as for the town dweller, he is the one who is more severely tested and more greatly rewarded.”. The angle of inference is clear from his words

«فَيُطِيعُ إِذَا أُمِرَ وَيُجِيبُ إِذَا دُعِيَ»

ﷺ *“he must respond and, must obey when he is commanded”, since the desert was part of the abode of Islam (Dar Al-Islam) even if it was not the abode of*

emigration (*Dar Al-Hijrah*). And accordingly with the evidence of the narration of Wathilah b. Al-Asqa' in Al-Tabarani, Al-Haythami said through a chain whose people are all trustworthy that the Messenger of Allah ﷺ said to him

«وَهَجْرَةُ الْبَادِيَةِ أَنْ تَرْجِعَ إِلَى بَادِيَتِكَ، وَعَلَيْكَ السَّمْعُ وَالطَّاعَةُ فِي عُسْرِكَ وَيُسْرِكَ وَمَكْرَهِكَ وَمَنْشَطِكَ وَأَثَرَةٍ عَلَيْكَ...»

“The migration of the nomad is to return to your wilderness, and to listen and obey in times of hardship and ease, whether you are willing or unwilling, and when someone is given undue preference to you...” and the evidence that Ahmad narrated with a *Sahih* chain from Anas:

«إِنِّي لَأَسْعَى فِي الْعِلْمَانِ يَقُولُونَ جَاءَ مُحَمَّدٌ، فَأَسْعَى فَلَا أَرَى شَيْئًا. ثُمَّ يَقُولُونَ: جَاءَ مُحَمَّدٌ، فَأَسْعَى فَلَا أَرَى شَيْئًا. قَالَ: حَتَّى جَاءَ رَسُولُ اللَّهِ ﷺ وَصَاحِبُهُ أَبُو بَكْرٍ، فَكُنَّا فِي بَعْضِ حِرَارِ الْمَدِينَةِ، ثُمَّ بَعَثَا رَجُلًا مِنْ أَهْلِ الْمَدِينَةِ لِيُؤْذِنَ بِهِمَا الْأَنْصَارَ، فَاسْتَقْبَلَهُمَا زُهَاءُ خَمْسِمِائَةٍ مِنَ الْأَنْصَارِ حَتَّى انْتَهَوْا إِلَيْهِمَا. فَقَالَتِ الْأَنْصَارُ: انْطَلِقَا آمِنَيْنِ مُطَاعَيْنِ. فَأَقْبَلَ رَسُولُ اللَّهِ ﷺ وَصَاحِبُهُ بَيْنَ أَظْهُرِهِمْ. فَخَرَجَ أَهْلُ الْمَدِينَةِ حَتَّى إِنَّ الْعَوَاتِقَ لَفَوْقَ الْبُيُوتِ يَتَرَاءَيْنَهُ يَقُلْنَ أَيُّهُمْ هُوَ أَيُّهُمْ هُوَ؟»

“I followed some youths saying that Muhammad has come, so I followed and did not see anything. Then they say – Muhammad has come, so I followed and did not see anything. He said: Until Muhammad ﷺ and his companion Abu Bakr came, and we were at some Madinah Hirar (sandy and rocky land). Then they sent a man from the people of Madinah to make the Ansar aware of them, and so they were met by about five hundred from the Ansar reaching them. The Ansar said: Proceed in safety and with authority. And so the

Messenger of Allah ﷺ and his companion came from between them. And so the people of Madinah came out, including the women overlooking from their households saying who is he, who is he?''. This narration has the evidence for both of the two conditions of security and the implementation of the laws. With respect to the security – this is proven from the presence of five hundred from the Ansar saying proceed in safety and the Messenger ﷺ confirmed their words. In the same manner he confirmed their words that the two of them would be obeyed. Accordingly the security and obedience were fulfilled in the abode of emigration (*Dar Al-Hijrah*) and if they had not been fulfilled the Prophet ﷺ would not have emigrated.

These two conditions, the fulfillment of security and obedience in the implementation of the laws, were pledged upon by the Ansar in Al-'Aqabah. Al-Bayhaqi narrated with a strong chain from 'Ubadah b. Samit who said

«... إِنَّا بَايَعْنَا رَسُولَ اللَّهِ ﷺ عَلَى السَّمْعِ وَالطَّاعَةِ فِي النَّشَاطِ وَالْكَسَلِ، وَالتَّفَقُّةِ فِي الْعُسْرِ وَالْيُسْرِ، وَعَلَى الْأَمْرِ بِالْمَعْرُوفِ وَالنَّهْيِ عَنِ الْمُنْكَرِ، وَعَلَى أَنْ نَقُولَ فِي اللَّهِ لَا تَأْخُذُنَا فِيهِ لَوْمَةٌ لَأَيِّمٍ. وَعَلَى أَنْ نَنْصُرَ رَسُولَ اللَّهِ ﷺ إِذَا قَدِمَ عَلَيْنَا يَتْرَبُ مِمَّا نَمْنَعُ أَنْفُسَنَا وَأَزْوَاجَنَا وَأَبْنَاءَنَا وَلَنَا الْجَنَّةَ. فَهَذِهِ بَيْعَةُ رَسُولِ اللَّهِ ﷺ الَّتِي بَايَعْنَاهُ عَلَيْهِ»

“...We pledged allegiance to the Messenger of Allah ﷺ to listen and obey when we were busy and inactive, and to spend in times of difficulty and ease, and upon enjoining the good and forbidding the evil, and upon saying the truth regarding Allah not fearing any blame, and that we support the Messenger of Allah ﷺ when he comes to Yathrib against whatever we protect ourselves, our wives and our sons from, and that (if we do so)

our reward is Paradise. This was the pledge that we gave to the Messenger of Allah ﷺ. The obedience is clear in

«بَايَعْنَا رَسُولَ اللَّهِ ﷺ عَلَى السَّمْعِ وَالطَّاعَةِ»

“We took pledge of allegiance to Messenger of Allah ﷺ to listen and obey.” and the security is that of the Muslims, as made clear by his words

«وَعَلَى أَنْ نَنْصُرَ رَسُولَ اللَّهِ ﷺ إِذَا قَدِمَ عَلَيْنَا يَثْرِبَ مِمَّا نَمْنَعُ أَنْفُسَنَا وَأَرْوَاحَنَا وَأَبْنَاءَنَا»

“and that we support the Messenger of Allah ﷺ when he comes to Yathrib against whatever we protect ourselves, our wives and our sons.”

This meaning was clear from the letter which he wrote between the Emigrants and the *Ansar*, and made peace with the Jews therein and made a covenant with them. This occurred in the first year of the emigration. This is from the account of Ibn Ishaq and it has been called the *sahifa*. It says:

«بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ: هَذَا كِتَابٌ مِنْ مُحَمَّدٍ النَّبِيِّ ﷺ بَيْنَ الْمُؤْمِنِينَ وَالْمُسْلِمِينَ مِنْ قُرَيْشٍ وَيَثْرِبَ وَمَنْ تَبِعَهُمْ فَلَحِقَ بِهِمْ وَجَاهَدَ مَعَهُمْ أَنَّهُمْ أُمَّةٌ وَاحِدَةٌ مِنْ دُونِ النَّاسِ ... وَإِنَّ الْمُؤْمِنِينَ بَعْضُهُمْ مُوَالِي بَعْضٍ دُونَ النَّاسِ ... وَإِنَّ عَلَى الْيَهُودِ نَفَقَتَهُمْ وَعَلَى الْمُسْلِمِينَ نَفَقَتَهُمْ، وَإِنَّ بَيْنَهُمْ النَّصْرَ عَلَى مَنْ حَارَبَ أَهْلَ هَذِهِ الصَّحِيفَةِ ... وَإِنَّهُ مَا كَانَ بَيْنَ أَهْلِ هَذِهِ الصَّحِيفَةِ مِنْ حَدَثٍ أَوْ اشْتِجَارٍ يُخَافُ فَسَادُهُ، فَإِنَّ مَرَدَّهُ إِلَى اللَّهِ عَزَّ وَجَلَّ وَإِلَى مُحَمَّدٍ رَسُولِ اللَّهِ ﷺ ...»

“In the name of Allah the Compassionate, the Merciful. This is a document from Muhammad the Prophet ﷺ between the believers and Muslims of Quraysh and Yathrib, and those who followed them and joined them and struggled alongside them that they are one community (Ummah) to the exclusion of

all men...Believers are protectors of one another to the exclusion of outsiders...The Jews must bear their expenses and the Muslims their expenses. Each must help the other against anyone who attacks the people of this document...If any dispute or controversy likely to cause trouble should arise, it must be referred to Allah and to Muhammad the Messenger of Allah ﷺ”.

Based upon this, the abode cannot be an abode of Islam unless it fulfilled the conditions that the security was in the hands of the Muslims and that the laws of Islam were implemented, and if one of these two conditions ceased, or was not fulfilled, such as the security falling into the hands of the disbelievers or that the rule of *Al-Taghut* was implemented amongst the people, the abode would become an abode of polytheism (*Dar Al-Shirk*) or disbelief (*Dar Al-Kufr*). It is not a condition that both of these conditions are absent for the abode to transform to an abode of polytheism, rather it is sufficient that one of them is absent for that to occur. The abode being one of disbelief does not mean that all of its inhabitants are disbelievers and if the abode was one of Islam it does not follow that all of its inhabitants are Muslims. Rather the meaning of the term abode (*Dar*) here is the *Shari'ah* terminology (*Shar'i* real meaning) in other words, that the *Shari'ah* is what gives it this meaning, like the terms prayer (*Salah*) and fasting (*Sawm*) and similar from the *Shar'i* realities .

Based upon this, the term could be applied upon a land where most of the inhabitants are Christians for example, but if it was part of the Islamic State it would be referred to as an abode of Islam (*Dar Al-Islam*). This is because the rules applied therein are the Islamic laws and the security of the land would be by the security of Islam as long as it remained part of the Islamic State.

And in the same manner, any land where the majority of its inhabitants are Muslims but it was part of a State which did not rule by Islam, nor was it secured by a Muslim army but rather by that of the disbelievers, then the term abode of disbelief (*Dar Al-*

Kufr) would be applied to it despite most of its inhabitants being Muslims.

So, the meaning of abode (*Dar*) here is the *Shar'i* reality (legislative meaning) without regard to where the Muslims were a majority or minority where the term is applied; rather, it is with regard to the implemented laws and the established security for its inhabitants. In other words, the meaning of abode is taken from the legislative (*Shar'i*) texts which explained this meaning, in the same way that the meaning of the word *Salah* is taken from the legislative texts which explained its meaning. And in the same manner all the *Shar'i* real meanings have their meaning derived from the legislative texts and not from the linguistic meaning of the words.

Article 3

The *Khalifah* adopts specific *Shari'ah* rules which he will enact as a constitution and laws. If he adopts a *Shari'ah* rule, this rule alone becomes the *Shari'ah* rule that must be acted upon and it becomes a binding law that every citizen must obey openly and privately.

The evidence of this article is derived from the *Ijma'* (General Consensus) of the Companions that the *Khalifah* reserves the right to adopt specific *Shari'ah* rules. It has also been established in the same manner that it is obligatory to act upon the rules adopted by the *Khalifah*. The Muslim is not permitted to act upon any rule other than what the *Khalifah* has adopted in terms of rules even if these rules were *Shari'ah* rules adopted by one of the *Mujtahideen* (scholars of Islam). This is so because the rule of Allah that becomes duly binding upon all the Muslims is what the *Khalifah* adopts. The rightly guided *Khulafaa'* proceeded in this manner; they adopted a host of specific rules and ordered their implementation. Thus the Muslims, with all of the Companions

amongst them, used to act upon these rules and to abandon their own *Ijtihad* (Islamic opinion derived from the Islamic evidences). For instance, Abu Bakr (ra) adopted in the matter of divorce a rule stipulating that the triple divorce would be considered as one divorce if it were pronounced in one sitting. He also adopted in the matter of distributing the wealth upon the Muslims a rule stipulating that wealth should be distributed equally amongst the Muslims, regardless of seniority in Islam or anything else. The Muslims followed him in this as well as the judges and the *Walis* (governors) implemented the rules that he had adopted. When Umar (ra) took office, he adopted other opinions different to those of Abu Bakr (ra) in the same two matters; he imposed the rule stipulating that the triple divorce is considered as three and he also distributed the wealth among the Muslims according to their seniority in Islam and according to their needs rather than distributing equally. The Muslims duly followed him in this and the judges and the governors implemented the rules he had adopted. Then, Umar (ra) adopted a rule stipulating that the land conquered in war is a spoil for *Bayt Al-Mal* (the State's treasury), not for the fighters, and that the land should remain with its owners and should not be divided among the fighters or among the Muslims. The governors and the judges duly complied and implemented the rule that he had adopted.

It was in this manner that all of the rightly guided *Khulafaa'* proceeded with respect to adoption of opinions, ordering people to abandon their *Ijtihad* and the rules which they had acted upon, and instead adhere to that which the *Khalifah* had adopted. So the *Ijma'* of the Companions was established on two matters; the first is the right of adoption and the second is the obligation of acting upon what the *Khalifah* adopts. Famous *Shari'ah* principles were derived based on this *Ijmaa'* of the Companions. These are: "*The Sultan reserves the right to effect as many judgements as the problems which arise*", "*The order of the Imam resolves the disagreement*" and "*The order of the Imam is binding*".

The evidence for adopting one Islamic opinion is the fact that there are different Islamic opinions regarding one single matter; hence, in order to act upon the *Shari'ah* rule in any matter it is imperative to adopt a specific Islamic opinion for it. This is so because the *Shari'ah* rules, which represent the address of the Legislator related to the actions of the worshippers, have come in the Quran and in the narrations, and many of these can have a number of possible meanings according to the Arabic language and according to *Shari'ah*. For that reason, it is natural and inevitable that people differ in their understanding of the address of the Legislator and that this difference in understanding reaches the level of disparity and contradiction in the intended meaning. Thus, it is inevitable to have different and contradictory understandings of the same matter. Because of this, there could be a host of different and contradictory opinions in a single matter. So when the Messenger of Allah ﷺ said at the battle of Ahzab:

«لَا يُصَلِّيَنَّ أَحَدُ الْعَصْرِ إِلَّا فِي بَنِي قُرَيْظَةَ»

“None should pray ‘Asr but at Bani Quraythah”
(recorded by Al-Bukhari through Ibn Umar), some understood that he was urging haste and so they prayed on their way to Bani Quraythah, while others understood that he ﷺ had literally ordered them to pray ‘Asr in Bani Quraythah; therefore, they delayed praying ‘Asr until they reached their destination. When the Messenger of Allah ﷺ heard of this, he approved both understandings, and there are many verses and narrations similar to this.

The difference of opinion in single matters makes it incumbent upon the Muslims to adopt one opinion from these various opinions since all of them are *Shari'ah* rules and the rule of Allah (swt) in one single matter regarding one person is not multiple. Therefore, it is imperative to choose one single rule from the *Shari'ah* in order to act upon. Hence, the Muslim's adoption of a specific *Shari'ah* rule is necessary and inevitable when he or she undertakes the action since undertaking the action

obliges the Muslim to accomplish it according to the *Shari'ah* rule. The obligation of acting according to the *Shari'ah* rule, whether this was a *Fard* (obligatory), *Mandub* (recommended), *Haram* (forbidden), *Makruh* (despised) or *Mubah* (permitted) makes it incumbent upon the Muslim to adopt a specific *Shari'ah* rule. Therefore, it is obligatory upon every Muslim to adopt a specific *Shari'ah* rule when taking rules for actions, irrespective of whether he or she was a *Mujtahid* or a *Muqallid* (someone who follows the opinion of a scholar in an issue rather than deriving it themselves) or whether they were the *Khalifah* or other than the *Khalifah*.

With respect to the *Khalifah*, it is imperative for him to adopt a host of specific rules according to which he assumes the management of peoples' affairs. Hence, it is necessary for him to adopt certain rules pertaining to what is of a general nature to all the Muslims in terms of matters of government and authority such as *Zakat*, levies, *Kharaj* (land tax), foreign relations and everything that is related to the unity of the State and ruling.

However, his adoption of the rules is subject to scrutiny. If the *Khalifah's* managing of the people's affairs were subject to adopting specific Islamic rules, then in this case the adoption would be obligatory upon the *Khalifah*. This would be in concordance with the *Shari'ah* principle stipulating that: "*That, without which the obligation cannot be accomplished, is itself an obligation*", such as the signing of treaties. However, if the *Khalifah* could manage peoples' affairs in a specific matter according to the Islamic *Shari'ah* rules without having to resort to the adoption of a specific rule in this matter, then in this case the adoption would be permitted for him rather than an obligation, such as *Nisab Al-Shahadah* (the minimum number of witnesses in a testimony). In this case, it is permitted for him to adopt or not to adopt, for in essence the adoption is permitted and not obligatory; this is so because the *Ijma'* of the Companions is that the *Imam* can adopt and there is no *Ijma'* that the *Imam* must adopt. Therefore, the adoption itself is permissible and it does not

become obligatory unless the obligatory management of peoples' affairs cannot be accomplished except through adoption. In such a case it then becomes obligatory so that the duty could be accomplished.

Article 4

The *Khalifah* does not adopt any specific *Shari'ah* rule in matters related to rituals ('*Ibadaat*) except in *Zakat* and *Jihad*, and whatever is necessary to protect the unity of the Muslims, and nor does he adopt any thought from among the thoughts related to the Islamic '*Aqeedah*.

There is a consensus of the companions that the *Khalifah* alone has the right to adopt and from this consensus the famous rules “the decision of the *Imam* resolves the disagreement” and “the decision of the *Iman* is binding” have been derived. However, it emerged from the events of Al-Ma'mun (pertaining the *Fitna* (strife) of the creation of the Quran), that adoption in the thoughts related to '*Aqa'id* (beliefs, plural of '*Aqeedah*) caused *Fitna* for the *Khalifah* and *Fitnah* amongst the Muslims. Therefore, the *Khalifah* deems it fit to abstain from adopting in matters related to '*Aqeedah* and in rules related to rituals in order to avoid problems and to gain the consent and tranquillity of the Muslims. However, abstaining from adopting in matters of '*Aqa'id* and in rituals does not mean that it is forbidden for the *Khalifah* to adopt in them, it rather means that the *Khalifah* chooses not to adopt in them for he can either adopt or abstain from adopting. Thus, he may choose not to adopt. That is why the article stated that the *Khalifah* “does not adopt” rather than stating that the *Khalifah* is “forbidden from adopting”, which indicates that he may choose not to adopt.

As for why he chooses to abstain from adopting in '*Aqa'id* and in rituals, this is based upon two issues: Firstly, the hardship caused by coercing people to follow a specific opinion related to

'*Aqeedah* matters. Secondly, the fact that what prompts the *Khalifah* to adopt is in reality the management of the Muslims' affairs by one single opinion and preserving the unity of the State and the unity of the ruling. Hence, he adopts in matters related to the relationships between individuals and related to public matters, and he does not adopt in matters related to relationship of man with his God.

With respect to the first issue, Allah prohibited the compulsion of the disbelievers to leave their beliefs and to embrace the Islamic '*Aqeedah*, forbade forcing them to leave their rituals and ordered compelling them to be restricted by other *Shari'ah* rules so, by greater reasoning, the Muslims should not be forced to leave the rules related to the beliefs as long as they remained Islamic beliefs and should not be forced to leave the rules related to rituals as long as they were *Shari'ah* rules. Also, the compulsion to leave ideas connected to beliefs is a definite cause of hardship and will inflame loyalty (to those ideas) without doubt as proven by what happened with Imams such as Imam Ahmed Ibn Hanbal in the *Fitna* of creation of the Quran. When they were subjected to beating and humiliation, they did not submit neither did they leave what they believed in. Allah (swt) says,

﴿وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ﴾

“(Allah) has not placed upon you in the religion any difficulty.” (TMQ 22:78).

The rituals are like the beliefs since compulsion upon specific rules while the person holds another opinion as the *Shari'ah* rule is a cause of distress upon the soul for it is the relationship of people with Allah and because it is bound to the '*Aqeedah*'; so the *Khalifah* should not adopt in whatever causes distress upon the Muslims. However, it is not forbidden for him to do so.

As for the second issue, the beliefs and the rituals are the relationship between man and the Creator and they do not bring about relationships upon which problems spring from, as opposed to the transactions and punishments since they are the relationship between the individuals within the society and cause the occurrence of relationships from which problems result. The origin in transactions is the resolution of disputes and the essence of the *Khalifah*'s adoption is to manage the peoples' affairs. Their affairs are openly managed on the part of the *Khalifah* with respect to what is between them in terms of relationships and there is no scope for this in regards to their relationship with Allah, in other words, in their beliefs and rituals.

For that reason the tangible reality of adoption by the *Khalifah* is that it can only be in respect to the relationships between people in order to manage their affairs and not in the relationships between them and Allah. Consequently, the reality of adoption is that it is only in the relationships between the people and the public relationships. So, adoption in the relationship between man and the Creator, in other words, in the beliefs and rituals, contradicts the reality of adoption. Based upon this, the *Khalifah* will not adopt in what contradicts the reality of adoption. However, it is not forbidden for him to do so.

Built upon these two matters – the distress or the hardship and the contradiction of the tangible reality of adoption, the *Khalifah* does not adopt in the thoughts of the beliefs or in the rules of the rituals. However, if a clear prohibition is mentioned in the Quran and in the *Sunnah* regarding a certain belief (*'Aqeedah*), then, at that time it is adopted (prohibiting that belief) even if there is hardship and even if it contradicts the reality of adoption so as to give preference to the definite text. For example, beliefs cannot be adopted except by conviction. In a similar fashion, it can be done if managing the affairs of the Muslims necessitates collecting them upon one rule. This is based upon the texts that enjoin the protection of the congregation of Muslims and the protection of the unity of the state. As example for this are the

specification for the times of Hajj and fasting Ramadan, the Eid celebrations, *Zakat* and *Jihad*.

In these issues the *Khalifah* adopts a specific *Shari'ah* rule since, with respect to the '*Aqeedah*', there cannot be compulsion to leave conviction, rather adhering to what is held as conviction is enforced. This is from text which is conclusive in its narration and indication (*Qati' Thobut Qati' Dalalah*). With regards to the ritualistic issues, there is no hardship in them since they are not from that which pertains to the relationship solely between man and His Lord such as prayer, rather they are those that are connected to the relationships between people, such as the celebrations. Due to this adoption is permitted in these two circumstance regarding beliefs and rituals.

What determines whether an idea is from the '*Aqeedah*' or from the *Shari'ah* rules is its *Shari'ah* evidence. So, if the evidence is an address related to the action of the servants of Allah, then, it is a *Shari'ah* rule since the *Shari'ah* law is the address of the Legislator related to the actions of the servant, and if it is not related to the actions of the servant, then, it is from the '*Aqeedah*'. Additionally, the difference between the '*Aqeedah*' and the *Shari'ah* rule is that what is requested to have *Iman* in and has no action requested in it, is from the '*Aqeedah*', such as the stories and the information regarding the unseen. Those issues that request action are the *Shari'ah* rules. So, the following words of Allah are all from '*Aqeedah*':

﴿ءَامِنُوا بِاللّٰهِ وَرَسُوْلِهِ وَاَلْكِتٰبِ الَّذِیْ نَزَّلَ عَلٰی رَسُوْلِهِ﴾

“Believe in Allah and His Messenger and the Book that He revealed to His Messenger.” (TMQ 4:136),

﴿اَللّٰهُ خَلِقُ كُلِّ شَیْءٍ ط﴾

“Allah is the Creator of all things.” (TMQ 39:62),

﴿وَأَذْكُرْ فِي الْكِتَابِ مَرْيَمَ﴾

“And mention, [O Muhammad], in the Book [the story of] Maryam.” (TMQ 19:16), and the words

﴿يَوْمَ يَكُونُ النَّاسُ كَالْفَرَاشِ الْمَبْثُوثِ ۖ وَتَكُونُ الْجِبَالُ كَالْعِهْنِ الْمَنْفُوشِ ۚ﴾

“It is the Day when people will be like moths, dispersed, And the mountains will be like wool, fluffed up.” (TMQ 101:4-5). All of these are from 'Aqeedah because they are not related to the actions of the servants; they are from what *Iman* is requested in, and there is no request for action in them. Also, the words of Allah:

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾

“But Allah has permitted trade and has forbidden interest (usury).” (TMQ 2:275),

﴿فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أَجُورَهُنَّ﴾

“And if they breastfeed for you, then give them their payment.” (TMQ 65:6), and His words,

﴿وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ﴾

“When you judge between people to judge with justice.” (TMQ 4:58) are all from the *Shari’ah* rules since they are related to the actions of the servants and they are from the issues that actions are requested in.

Based upon this, the fact that the Messenger of Allah ﷺ is the seal of the Prophets is considered from the '*Aqeedah*' since it comes under what is requested to have *Iman* in. Conversely, the Imamate, in other words, the *Khilafah* is not from the '*Aqeedah*' since it is amongst the issues which action is requested in. The fact that the Prophet ﷺ is free from sin is considered from the '*Aqeedah*'. However, the issue of the *Khalifah* being from Quraysh, *Ahl Al-Bayt* (family of the Prophet) or any Muslim from amongst the Muslims is from the rules of the *Shari’ah* and it isn't from the '*Aqeedah*' since it is related to the actions of the servants and is related to the conditions of the *Khalifah*. In this manner, everything that is not connected to the actions or is requested to have *Iman* in is from the '*Aqeedah*', but what is from the actions of the servants or what is requested to be acted upon is considered to be from the *Shari’ah* rules.

The reality of '*Aqeedah*' is that it is a fundamental thought; the meaning of it being an '*Aqeedah*' is that it is taken as the fundamental criteria to measure anything else; ,therefore, if the idea was not a fundamental one, then it would not be considered '*Aqeedah*'. Also, '*Aqeedah*' is the comprehensive thought regarding the universe, man and life, what came before the life of this world and what will come after it and the relationship between life and what came before it and what will be after it. This definition is for every '*Aqeedah*' and is applied upon the Islamic '*Aqeedah*'. The definition also includes the unseen within it. Accordingly, every thought from the ideas of this comprehensive thought is from the '*Aqeedah*'. So, everything which is related to Allah, the Day of Judgement, the creation of the universe and the like is part of the '*Aqeedah*', but everything which has no relation with that is not considered from the '*Aqeedah*'.

Article 5

All citizens of the Islamic State enjoy the *Shari'ah* rights and duties.

Article 6

The State is forbidden to discriminate at all between the individuals in terms of ruling, judiciary and management of affairs or their like. Rather, every individual should be treated equally regardless of race, *Deen*, colour or anything else.

These two articles have been drafted in order to explain the rules pertaining to those who carry the Islamic citizenship irrespective of whether they were Muslims or the people of *Dhimmah* (non-Muslim citizen of the Islamic State). As for the Muslims, this is due to the fact that the Messenger ﷺ has denied the Muslims who live outside the Islamic State and who do not hold the Islamic citizenship from the rights enjoyed by the State's subjects. On the authority of Sulayman Ibn Buraydah on that of his father who said:

«كَانَ رَسُولُ اللَّهِ ﷺ إِذَا أَمَرَ أَمِيرًا عَلَى جَيْشٍ أَوْ سَرِيَّةٍ أَوْصَاهُ فِي خَاصَّتِهِ بِتَقْوَى اللَّهِ وَمَنْ مَعَهُ مِنَ الْمُسْلِمِينَ خَيْرًا، ثُمَّ قَالَ: اغْزُوا بِاسْمِ اللَّهِ فِي سَبِيلِ اللَّهِ، قَاتِلُوا مَنْ كَفَرَ بِاللَّهِ، اغْزُوا وَلَا تَغْلُوا وَلَا تَغْدِرُوا وَلَا تَمْثُلُوا وَلَا تَقْتُلُوا وَلِيدًا، وَإِذَا لَقِيتَ عَدُوَّكَ مِنَ الْمُشْرِكِينَ فَادْعُهُمْ إِلَى ثَلَاثِ خِصَالٍ أَوْ خِلَالٍ، فَأَيُّتُهُنَّ مَا أَجَابُوكَ فَاقْبَلْ مِنْهُمْ وَكُفَّ عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى الْإِسْلَامِ، فَإِنْ أَجَابُوكَ فَاقْبَلْ مِنْهُمْ وَكُفَّ عَنْهُمْ، ثُمَّ ادْعُهُمْ إِلَى التَّحَوُّلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَاجِرِينَ، وَأَخْبِرْهُمْ أَنَّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ مَا لِلْمُهَاجِرِينَ وَعَلَيْهِمْ مَا عَلَى الْمُهَاجِرِينَ، فَإِنْ أَبَوْا أَنْ يَتَحَوَّلُوا مِنْهَا فَأَخْبِرْهُمْ أَنََّّهُمْ

يَكُونُونَ كَأَعْرَابِ الْمُسْلِمِينَ يَجْرِي عَلَيْهِمْ حُكْمُ اللَّهِ الَّذِي يَجْرِي عَلَى الْمُؤْمِنِينَ، وَلَا يَكُونُ لَهُمْ فِي الْغَنِيمَةِ وَالْفَيْءِ شَيْءٌ إِلَّا أَنْ يُجَاهِدُوا مَعَ الْمُسْلِمِينَ»

“When the Messenger of Allah ﷺ appointed anyone as leader of an army or detachment he would especially exhort him to fear Allah and to be good to the Muslims who were with him. He would say: Fight in the name of Allah and in the way of Allah. Fight against those who disbelieve in Allah. Make a holy war, do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children. When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these, you also accept it and withhold yourself from doing them any harm. Invite them to (accept) Islam; if they respond to you, accept it from them and desist from fighting against them. Then invite them to migrate from their lands to the land of Emigrants and inform them that, if they do so, they shall have all the privileges and obligations of the Emigrants. If they refuse to migrate, tell them that they will have the status of Bedouin Muslims and will be subjected to the Commands of Allah like other Muslims, but they will not get any share from the spoils of war or Fai' except when they actually fight with the Muslims (against the disbelievers).” (Recorded by Muslim). This narration indicates clearly that the one who does not migrate to Dar Al-Islam will not enjoy any of the rights of citizenship even if he were a Muslim. The Messenger of Allah ﷺ invited them to come under the authority of Islam so that they may enjoy what the Muslims enjoyed and undertake the obligations which the Muslims undertook; he ﷺ said:

«ثُمَّ ادْعُهُمْ إِلَى التَّحَوُّلِ مِنْ دَارِهِمْ إِلَى دَارِ الْمُهَاجِرِينَ، وَأَخْبِرْهُمْ أَنََّّهُمْ إِنْ فَعَلُوا ذَلِكَ فَلَهُمْ مَا لِلْمُهَاجِرِينَ وَعَلَيْهِمْ مَا عَلَى الْمُهَاجِرِينَ»

“Then invite them to migrate from their lands to the land of Emigrants (Muhajirin) and inform them that, if they do so,

they shall have all the privileges and obligations of the Emigrants". This text stipulates that migration is required for them to have what we have and for our obligations to be upon them, in other words, for them to fall under the laws. The understanding of the narration is that if they did not move they would not have what the emigrants had, in other words, what they had in the abode of Islam (*Dar Al-Islam*), so this narrations explain the difference in the laws between the one who moves to the abode of the emigrants and the one who doesn't, and the abode of the emigrants was the abode of Islam with anything else being the abode of disbelief (*Dar Al-Kufr*). The individual's residence in *Dar Al-Islam* or in *Dar Al-Kufr* is referred to as citizenship. Hence, a person's citizenship means the abode which he chooses as his residence; is it *Dar Al-Islam* or *Dar Al-Kufr*? If it were *Dar Al-Islam*, then the rules of *Dar Al-Islam* would apply to it, and in this case a person would be a holder of an Islamic citizenship. If it were *Dar Al-Kufr*, the rules of *Dar Al-Kufr* would apply to it, and the person living there would not be considered as a holder of an Islamic citizenship.

The laws encompass the *Dhimmi* who lives in *Dar Al-Islam*, so they are given the rights of residency and carry the citizenship. The *Dhimmi* is the one who embraces any *Deen* other than Islam and becomes a citizen of the Islamic State while remaining upon his faith which is other than Islam. The word *Dhimmi* is derived from the word *Dhimmah*, meaning the oath. Hence, the *Dhimmi* are those to whom we give an oath to treat according to the terms of peace we made with them and to proceed in interaction with them and in managing their affairs according to the rules of Islam.

Islam has come with several rules pertaining to the people of *Dhimmah*, in which it guaranteed the rights of citizenship for them and imposed upon them its duties. Islam also outlined that the *Dhimmi* enjoy the same justice we enjoy and that they should abide by the same rules that we abide by. As for that which they

enjoy in terms of justice and fairness, this is derived from the general command reflected in Allah (swt) saying:

﴿وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ﴾ ﴿وَلَا يَجْرِمَنَّكُمْ شَتَانُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا أَعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ﴾

“When you judge between people to judge with justice.” (TMQ 4:58) and in His (swt) saying:

﴿وَلَا يَجْرِمَنَّكُمْ شَتَانُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا أَعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ﴾

“O you who have believed, do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness.” (TMQ 5:8) and it is also reflected in Allah (swt) saying regarding the judgement between the people of the book

﴿وَإِنْ حَكَمْتَ فَأَحْكُم بَيْنَهُم بِالْقِسْطِ﴾

“And if you judge, judge between them with justice.” (TMQ 5:42).

As for abiding by that which we abide by in terms of justice, this is derived from the actions and sayings of the Messenger of Allah ﷺ. He ﷺ used to exact the same punishment upon the disbelievers and the Muslims. The Messenger of Allah ﷺ punished a Jew by killing him for killing a woman, as has been recorded in Al-Bukhari from Anas Bin Malik who said:

«خَرَجْتُ جَارِيَةً عَلَيْهَا أُوضَاخٌ بِالْمَدِينَةِ قَالَ فَرَمَاهَا يَهُودِيٌّ بِحَجَرٍ قَالَ فَجِئْتُ بِهَا إِلَى النَّبِيِّ ﷺ وَبِهَا رَمَقٌ فَقَالَ لَهَا رَسُولُ اللَّهِ ﷺ فُلَانٌ قَتَلَكَ فَرَفَعْتَ رَأْسَهَا

فَأَعَادَ عَلَيْهَا قَالِ فُلَانٌ قَتَلَكَ فَرَفَعَتْ رَأْسَهَا فَقَالَ لَهَا فِي الثَّالِثَةِ فُلَانٌ قَتَلَكَ
فَحَفِضَتْ رَأْسَهَا فَدَعَا بِهِ رَسُولُ اللَّهِ ﷺ فَقَتَلَهُ بَيْنَ الْحَجَرَيْنِ»

“A girl wearing ornaments, went out at Medina. Somebody struck her with a stone. She was brought to the Prophet ﷺ while she was still alive. Allah's Prophet ﷺ asked her, "Did such-and-such a person strike you?" She raised her head, denying that. He asked her a second time, saying, "Did so-and-so strike you?" She raised her head, denying that. He said for the third time, "Did so-and-so strike you?" She lowered her head, agreeing. Allah's Apostle then sent for the killer and killed him between two stones.”.

«أَتَى رَسُولُ اللَّهِ ﷺ يَهُودِيٌّ وَيَهُودِيَّةٌ قَدْ أَخَذَتَا جَمِيعًا فَقَالَ لَهُمَا مَا
تَجِدُونَ فِي كِتَابِكُمَا قَالُوا إِنَّ أَحْبَارَنَا أَخَذُوا تَحْمِيمَ الْوَجْهِ وَالتَّجْبِيَةَ قَالَ عَبْدُ اللَّهِ بْنُ
سَلَامٍ ادْعُهُمَا يَا رَسُولَ اللَّهِ بِالتَّوْرَةِ فَأَتَى بِهَا فَوَضَعَ أَحَدُهُمَا يَدَهُ عَلَى آيَةِ الرَّجْمِ وَجَعَلَ
يَقْرَأُ مَا قَبْلَهَا وَمَا بَعْدَهَا فَقَالَ لَهُ ابْنُ سَلَامٍ ارْفَعْ يَدَكَ فَإِذَا آيَةُ الرَّجْمِ تَحْتَ يَدِهِ فَأَمَرَ
بِهِمَا رَسُولُ اللَّهِ ﷺ فَرَجَمَهُمَا»

“A Jew and a Jewess were brought to Allah's Apostle on a charge of committing an illegal sexual intercourse. The Prophet ﷺ asked them. "What is the legal punishment (for this sin) in your Book (Torah)?" They replied, "Our priests have innovated the punishment of blackening the faces with charcoal and Tajbiya." `Abdullah bin Salam said, "O Allah's Prophet ﷺ, tell them to bring the Torah." The Torah was brought, and then one of the Jews put his hand over the Divine Verse of the Rajam (stoning to death) and started reading what preceded and what followed it. On that, Ibn Salam said to the Jew, "Lift up your hand." Behold! The Divine Verse of the Rajam was under his hand. So Allah's Prophet ﷺ ordered that the two (sinners)

be stoned to death .” It is a duty upon us to give the people of the *Dhimmah* the protection given to the Muslims, due to words of the Messenger of Allah ﷺ,

«أَلَا مَنْ قَتَلَ نَفْسًا مُعَاهِدًا لَهُ ذِمَّةُ اللَّهِ وَذِمَّةُ رَسُولِهِ فَقَدْ أَخْفَرَ بِذِمَّةِ اللَّهِ، فَلَا يُرِخُ رَائِحَةَ الْجَنَّةِ، وَإِنْ رِيحُهَا لَيُوجَدُ مِنْ مَسِيرَةِ سَبْعِينَ خَرِيفًا»

“Indeed, whoever kills a person who is granted the pledge of protection (Mu'ahid) that has a covenant from Allah and a covenant from His Messenger (saw), then he has violated the covenant with Allah and the covenant of His Messenger, so he shall not smell the fragrance of Paradise; even though its fragrance can be sensed from the distance of seventy autumns.”, transmitted by Al-Tirmidhi who said it is *Hasan Sahih*. And Al-Bukhari transmitted it with the words

«مَنْ قَتَلَ مُعَاهِدًا لَمْ يَرِخْ رَائِحَةَ الْجَنَّةِ وَإِنْ رِيحُهَا تُوجَدُ مِنْ مَسِيرَةِ أَرْبَعِينَ عَامًا»

“Whoever killed a Mu'ahid (a person who is granted the pledge of protection by the Muslims) shall not smell the fragrance of Paradise though its fragrance can be smelt at a distance of forty years (of traveling).”

The people of *Dhimmah* enjoy the same rights as those enjoyed by Muslims in terms of managing their affairs and securing their living. It is narrated on the authority of Abu Musa Al-Ash'ari that the Messenger of Allah ﷺ said:

«أَطْعِمُوا الْجَائِعَ، وَعَوِّدُوا الْمَرِيضَ، وَفُكُّوا الْعَانِي»

“Give food to the hungry, pay a visit to the sick and release (set free) the one in captivity (by paying his ransom).” transmitted by Al-Bukhari through Abu Musa. Abu 'Ubaydah said:

"وكذلك أهل الذمة يجاهد من دونهم، ويفتك عناتهم، فإذا استنقذوا رجعوا إلى ذمتهم وعهدهم أحراراً، وفي ذلك أحاديث"

"Therefore, the Dhimmis are excluded from Jihad, their prisoners are freed and if they are slaved, they return to their Dhimmah and their covenant as free, and there are narrations regarding that". And on the authority of Ibn Abbas who said:

صالح رسول الله ﷺ أهل نجران

"The Messenger of Allah ﷺ made peace with the people of Najran" and from the narration as transmitted by Abu Dawud in his *Sunan*

"عَلَى أَنْ لَا تُهْدَمَ لَهُمْ بَيْعَةٌ، وَلَا يُخْرَجَ لَهُمْ قَسٌّ، وَلَا يُفْتَنُوا عَنْ دِينِهِمْ مَا لَمْ يُحْدِثُوا حَدَثًا أَوْ يَأْكُلُوا الرِّبَا"

"No church of theirs will be demolished and no clergyman of theirs will be turned out. There will be no interruption in their religion (coerced away from their faith) until they introduce something in our matter that does not belong to it or take".

The Prophet ﷺ used to visit their sick, as recorded by Al-Bukhari from Anas who said

«كَانَ غُلَامٌ يَهُودِيٌّ يَخْدُمُ النَّبِيَّ ﷺ، فَمَرِضَ، فَأَتَاهُ النَّبِيُّ ﷺ يَغُودُهُ، فَقَعَدَ عِنْدَ رَأْسِهِ فَقَالَ لَهُ: أَسْلِمَ، فَتَنَظَرَ إِلَى أَبِيهِ وَهُوَ عِنْدَهُ، فَقَالَ لَهُ: أَطْعَمَ أَبَا الْقَاسِمِ ﷺ، فَأَسْلَمَ، فَخَرَجَ النَّبِيُّ ﷺ وَهُوَ يَقُولُ: الْحَمْدُ لِلَّهِ الَّذِي أَنْقَذَهُ مِنَ النَّارِ»

"A young Jew became ill. The Prophet ﷺ went to visit him. He sat down by his head and said to him: Accept Islam. He looked at his father who was beside him near his head, and he said: Obey Abu Al-Qasim. So he accepted Islam, and the Prophet ﷺ stood up saying: Praise be to Allah Who has saved

him through me from Hell.” which indicates that it is permitted to visit them, be courteous and sociable with them. Al-Bukhari transmitted from Amru Bin Maymun from Umar Bin Al-Khattab (ra) who counselled at the time of his death ***“And I enjoin the Khalifah after me with this and this, and enjoin him that by the covenant of Allah and His Messenger ﷺ, he should fulfil their covenant, fight behind them and not force them to work beyond their capacity”***.

The *Dhimmi* should not be interfered with in terms of their faith and their rituals, for the Messenger of Allah (saw) said according to what Abu Ubaid reported in *Al-Amwal* through ‘Urwa who said: The Messenger of Allah ﷺ wrote to the people of Yemen:

«مَنْ كَانَ عَلَى يَهُودِيَّةٍ أَوْ نَصْرَانِيَّةٍ فَإِنَّهُ لَا يُفْتَنُ عَنْهَا، وَعَلَيْهِ الْجَزْيَةُ»

“He who is upon his Judaism and his Christianity, should not be coerced away from their faith”. Custom duties are not extracted from the *Dhimmi* in the same way they are not taken from the Muslims. Abu ‘Ubayd reported in *Al-Amwal* from ‘Abd Al-Rahman Bin Ma’qal who said: I asked Ziyaad Bin Hudair about whom they would take a tenth from. He said

"ما كنا نعشر مسلماً ولا معاهداً. قلت: فمن كنتم تعشرون؟ قال: تجار

الحرب كما كانوا يعشروننا إذا أتيناهم"

“We didn’t use to take a tenth from a Muslim, nor from someone who had a covenant. I said: So who did you take the tenth from? He said: The disbelievers from the merchants of war, so we used to take from them as they used to take from us”. The tax collector is the one who extracts the custom duties.

Therefore, the *Dhimmi* are subjects of the State, like any other subjects, enjoying the rights of citizenship, protection, guaranteed living and fair treatment. They also enjoy the right of being treated with kindness, leniency and clemency. They can join the Islamic armed forces and fight alongside the Muslims if

they choose to do so, but they are not obliged to fight and no wealth is obliged from them except the *Jizya*, so the taxes that are obliged upon the Muslims do not apply to them. They are viewed by the ruler and the judge in the same light as the Muslims are viewed without any discrimination in terms of the management of their affairs and the implementation of the rules of transactions and the penal code upon them. Therefore, the *Dhimmi* enjoys all the rights, equally and exactly as those enjoyed by the Muslim; he is also expected to perform all the duties incumbent upon him, such as the fulfilment of the oath and the obedience of the State's orders.

In this way it can be seen that the issue with respect to being taken care of is the citizenship of the State, irrespective of whether they were Muslim or not. It is forbidden to discriminate in any way between those who hold the Islamic citizenship, due to the generality of the evidences pertaining the ruling and judicial matters and management of affairs. Allah (swt) says:

﴿وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ﴾

“When you judge between people to judge with justice.” (TMQ 4:48). This is a general address that applies to all people, Muslims and non-Muslims alike. Furthermore, the Messenger of Allah ﷺ said:

«الْبَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ»

“But, the onus of proof is upon the claimant, and the taking of an oath is upon him who denies.” as transmitted by Al-Bayhaqi with a *Sahih* chain. This is also general and it applies to Muslims and non-Muslims alike. It is narrated from ‘Abd Allah Bin Zubayr who said:

«قَضَى رَسُولُ اللَّهِ ﷺ أَنَّ الْخَصْمَيْنِ يَقْعُدَانِ بَيْنَ يَدَيِ الْحَكَمِ»

“The Messenger of Allah ﷺ has decreed that the two disputing parties should both sit before the judge” reported by Ahmad and Abu Dawud and authenticated by Al-Hakim. This is also general and it includes any two disputing parties, Muslims and non-Muslims alike. The Messenger of Allah ﷺ said

«الإِمَامُ رَاعٍ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ»

“The Imam is a guardian and he is responsible for his subjects.” (Agreed upon by Muslim and Al-Bukhari). The term “*subjects*” is general and it includes all the subjects, Muslims and non-Muslims alike. Likewise, all the general evidences related to citizenship indicate that it is forbidden to discriminate between the Muslim and the non-Muslim, between the Arab and the non-Arab or between the white and the black. Rather, all the people who hold the Islamic citizenship should rather be treated equally, without any discrimination between them either by the ruler, in terms of looking after their affairs and in terms of protecting their lives, their honour and their wealth, or by the judge in terms of equality and justice.

Article 7

The State implements the Islamic *Shari’ah* upon all those who hold the Islamic citizenship, with no difference between Muslims and non-Muslims as follows:

- (a) All the rules of Islam will be implemented upon the Muslims without any exception.**
- (b) The non-Muslims will be allowed to follow their beliefs and worships within the scope of the general system.**
- (c) The rule of apostasy will be implemented upon the apostates from Islam if they themselves were the apostates. As for their children, they will be treated as non-Muslims if they are born as such. Thus,, they will be treated in**

accordance with their current status as being either polytheists or people of the book.

- (d) The non-Muslims will be treated in matters related to foodstuffs and clothing according to their faith and within the scope of what the *Shari'ah* rules permit.
- (e) Matters of marriage and divorce will be settled among the non-Muslims according to their faith, and will be settled between them and the Muslims according to the rules of Islam.
- (f) The State will implement the rest of the *Shari'ah* rules and all the Islamic *Shari'ah* matters, such as transactions, penal codes, testimonies, ruling systems and economics among others equally upon the Muslims and non-Muslims. The State will also implement the same upon those with a covenant, the asylum seekers and all those under the authority of Islam in the same way. It implements them upon all members of society except for the ambassadors, consuls, and similar for they have diplomatic immunity.

Truly Islam has come for all people. Allah (swt) says

﴿وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِّلنَّاسِ﴾

“And We have not sent you except comprehensively to mankind.” (TMQ 34:28). Just like the disbeliever is obligated to abide by the “*Usul*” (foundations), in other words, by the Islamic '*Aqeedah*, he is also obligated to abide by the branches i.e. the *Shari'ah* rules. As for the fact that he is obligated to abide by the rules, this is clearly mentioned in the verses of the Holy Quran, and as for the fact that he is obligated to abide by the branches, this is because Allah (swt) has clearly obligated him with some of the branches, among which are those verses commanding the disbeliever to worship Allah (swt). He (swt) says,

﴿يَتَأْتِيهَا النَّاسُ أَعْبُدُوا رَبَّكُمْ﴾

“O mankind, worship your Lord.” (TMQ 2:21), Allah (swt) also says,

﴿وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ﴾

“And [due] to Allah from the people is a pilgrimage to the House.” (TMQ 3:97), and similar. Moreover, were the disbelievers not obligated to abide by the branches, Allah (swt) would not warn them against their violation, and the verses warning them against the forsaking of these branches are numerous, some of which are:

Allah (swt) says,

﴿وَوَيْلٌ لِّلْمُشْرِكِينَ ۚ الَّذِينَ لَا يُؤْتُونَ الزَّكَاةَ﴾

“And woe to those who associate others with Allah; Those who do not give Zakah.” (TMQ 41:6-7).

Allah (swt) also says,

﴿وَالَّذِينَ لَا يَدْعُونَ مَعَ اللَّهِ إِلَهًا ءَاخَرَ وَلَا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ

اللَّهُ إِلَّا بِالْحَقِّ وَلَا يَزْنُونَ ۚ وَمَن يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا ۖ﴾

“And those who do not invoke with Allah another deity or kill the soul which Allah has forbidden [to be killed], except by right, and do not commit unlawful sexual intercourse. And whoever should do that will face punishment.” (TMQ 25:68).

Allah (swt) also says,

﴿مَا سَلَكَكُمْ فِي سَقَرٍ ۚ قَالُوا لَمَن نُّكَ مِنَ الْمَصْلُومِينَ ۖ﴾

““What put you into Saqar (Hell Fire)?” They will say, “We were not of those who prayed.” (TMQ 74:42-3).

The fact that the disbelievers have been obligated to abide by some of the commands and prohibitions indicates that they have been obligated to abide by all the commands and prohibitions. Furthermore, the verses which stipulate the obligation to abide by the branches are mentioned in a general term and the general term remains upon its generality unless the evidence of specification is mentioned; in this context, no evidence has been mentioned which restricts these verses to the Muslims, and so they remain general. For instance, Allah (swt) says,

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾

“Allah has permitted trade and has forbidden interest (usury).” (TMQ 2:275), and He (swt) says

﴿فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُمْ أَجُورَهُنَّ﴾

“And if they breastfeed for you, then give them their payment.” (TMQ 65:6), Allah (swt) also says,

﴿فَرَهْنٌ مَّقْبُوضَةٌ﴾

“And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken.” (TMQ 2:283), and the words of the Messenger of Allah ﷺ

«مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ»

“He who revives a barren land, it becomes his” reported by Ahmad and Al-Tirmidhi with a *Sahih* chain through Jabir. The Messenger of Allah ﷺ also said

«عَلَى الْيَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ»

“The hand is liable for what it has taken until it is given back” transmitted by Ahmad with a *Sahih* chain through Samurah

Bin Jundub There are many other rules to this effect. This serves as clear evidence that they are obligated to abide by the branches.

Furthermore, the commandment to abide by the foundation is in itself a commandment to abide by the branch, and the commandment to abide by the whole is a commandment to abide by the part; so, the obligation to pray entails the obligation of the prostration, the recitation, the standing and so on. The disbeliever is commissioned to abide by the foundation; thus, he is obligated to abide by the branch. As for the non-acceptance of some branches from the disbelievers, such as prayer and fasting, this is because the embracing of Islam is one of the conditions of acceptance; thus, they would not be accepted until the condition is fulfilled. However, this does not mean that it is not obligatory upon them. As for the fact that they are not commanded to perform certain branches that embracing Islam is not a condition for such as *Jihad* this is because *Jihad* is fighting the disbeliever for their disbelief, and the *Dhimmi* is a disbeliever. Thus, it is inconceivable for him to fight the disbelievers due to their disbelief; otherwise, it would be permitted for him to fight himself. Therefore, he is not obligated to perform *Jihad*. However, if he accepts to fight a disbeliever, it will be accepted of him. However, he will not be forced to perform *Jihad* and this does not mean that he is not commanded by Allah (swt) to perform it.

This is from the fact that they are obligated to abide by the rules of Islam. As for the fact that the ruler should implement all the rules of Islam upon them, this is reflected in Allah's (swt) saying with respect to the People of the Book

﴿فَاحْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ﴾

“Judge between them by what Allah has revealed and do not follow their inclinations.” (TMQ 5:48). Allah (swt) also says with respect to them

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ﴾

“Judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations.” (TMQ 5:49).
Allah (swt) also says

﴿إِنَّا أَنزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرْنَاكَ اللَّهُ﴾

“Indeed, We have revealed to you, [O Muhammad], the Book in truth so you may judge between the people by that which Allah has shown you.” (TMQ 4:105).

This is a general address that includes Muslims and non-Muslims alike, because the word **“people”** in

﴿لِتَحْكُمَ بَيْنَ النَّاسِ﴾

“so that you judge between people” is general. As for His (swt) saying

﴿سَمْعُونَ لِلْكَذِبِ أَكَلُونَ لِلسُّحْتِ فَإِنْ جَاءُوكَ فَاحْكُم بَيْنَهُمْ أَوْ

أَعْرِضْ عَنْهُمْ﴾

“[They are] avid listeners to falsehood, devourers of [what is] unlawful. So if they come to you, [O Muhammad], judge between them or turn away from them.” (TMQ 5:42), this means that if one were to come to the Islamic State from abroad seeking the arbitration of the Muslims in a dispute with another disbeliever or other disbelievers, the Muslims in this case are given the choice of either judging between the disputing parties or declining to do so. This is since the verse was revealed concerning those whom the Messenger of Allah ﷺ had made peace with and signed treaties with from among the Jews of Madinah who were living as tribes and they were considered as other states. They were not under the authority of Islam; rather,

they were other states. Thus, he ﷺ had signed treaties with them. However, if they were under the authority of Islam, such as the *Dhimmi*, or if they came as asylum seekers, it would be forbidden to judge between them by other than Islam. The one who refused to refer to the rule of Islam, would be forced to by the ruler and the ruler would punish him for it.

It is forbidden to conclude an indefinite *Dhimma* oath with the disbeliever unless two conditions are fulfilled. Firstly, that *Dhimmi*s adhere to paying the *Jizya* each year, and secondly that they abide by the rules of Islam i.e. the acceptance of what is enforced upon them in terms of executing orders and abstaining from prohibitions. This is due to the words of Allah (swt):

﴿حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ﴾

“Until they give the Jizyah willingly while they are humbled.” (TMQ 9:29), meaning until they submit to the rules of Islam. In addition, the Messenger of Allah ﷺ used to implement the rules of Islam upon them. Al-Bukhari transmitted through Ibn Umar:

«أَنَّ الْيَهُودَ جَاءُوا إِلَى النَّبِيِّ ﷺ بِرَجُلٍ مِنْهُمْ وَامْرَأَةٍ زَنِيَا فَأَمَرَ بِهِمَا فَرُجِمَا»

“The Jews came to the Prophet ﷺ with a man and woman from amongst them who had committed adultery and so he had them stoned”, and Al-Bukhari reported through Anas:

«أَنَّ النَّبِيَّ ﷺ قَتَلَ يَهُودِيًّا بِجَارِيَةٍ قَتَلَهَا عَلَى أَوْضَاحٍ لَهَا»

“The Prophet killed a Jew who killed a woman for her ornaments”. Those Jews were subjects of the Islamic State. Also, the Messenger of Allah ﷺ wrote to the people of Najran who were Christians saying:

«أَنَّ مَنْ بَايَعَ مِنْكُمْ بِالرِّبَا فَلَا دِمَّةَ لَهُ»

“He who deals in usury from amongst you, shall be denied the Dhimmah covenant” reported by Ibn Abu Shaybah through Al-Shu’bah (*Mursal* narration). All this serves as evidence about the obligation to implement all the rules of Islam upon all of the subjects without any difference between Muslims and non-Muslims. It is on this basis that clause A of this article has been drafted.

As for clause B, the general order regarding the implementation of all the rules of Islam is mentioned in Allah’s (swt) saying

﴿فَاحْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ﴾

“So judge between them by what Allah has revealed.” (TMQ 5:48). This general rule has been specified by *Shari’ah*; excluding the *'Aqeedah* they embrace, the rules which are to them a matter of faith and the rules pertaining the actions which the Messenger of Allah ﷺ has allowed them to perform. The *'Aqeedah* and all of these rules have been made an exception by Islam through a host of clear texts. Allah (swt) says:

﴿لَا إِكْرَاهَ فِي الدِّينِ﴾

“There shall be no compulsion in [acceptance of] the religion.” (TMQ 2:256), and the Messenger of Allah ﷺ said:

«إِنَّهُ مَنْ كَانَ عَلَى يَهُودِيَّتِهِ أَوْ نَصْرَانِيَّتِهِ فَإِنَّهُ لَا يُفْتَنُ عَنْهَا، وَعَلَيْهِ الْجَزْيَةُ»

“Whoever is a Jew or a Christian should not be coerced away from his faith, and he must pay Jizya” transmitted by Abu Ubaid in *Al-Amwal* through ‘Urwah. Hence, any action which is considered as a matter of faith to them should not be interfered with by us and we should allow them to practise what they believe, even if this were not part of *'Aqeedah* matters in our

Deen. Additionally, we should also not interfere with them in regard to any actions that the Messenger of Allah ﷺ allowed them to perform, such as drinking alcohol and getting married, within the scope of the general system. In other words, it is permitted for them to drink alcohol in their private lives but not in the general affairs where they mix with the Muslims such as the general markets and the like.

As for Clause 'C' of this article, Islam has decreed a host of rules regarding the apostate, amongst them that the apostate should be killed he or she does not repent since the Messenger of Allah ﷺ said:

«مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ»

“He who changes his religion (i.e. apostates) kill him.”
(transmitted by Al-Bukahri through Ibn Abbas). Anas reported:

"فقدمت على عمر رضي الله عنه فقال: يا أنس، ما فعل الستة الرهط من بكر بن وائل الذين ارتدوا عن الإسلام فلحقوا بالمشركين؟ قال: يا أمير المؤمنين، قتلوا بالمعركة، فاسترجع عمر، قلت: وهل كان سيبلهم إلا القتل؟ قال: نعم، قال: كنت أعرض عليهم الإسلام، فإن أبوا أودعتهم السجن"

“I came to Omar who said: O Anas, what happened to the six from Bakr Ibnu Wa’il? So I said: O Amir of believers, they were killed in the battle. Upon this Omar recited Allah’s (swt) saying: “To Allah we belong and to Him we will return”. So I said: “Could they have been dealt with by other than death? He said: “Yes, I would have invited them to Islam and had they refused, I would have thrown them in jail” as reported by Al-Bayhaqi. In other words, until they repent and if they did not, they would be killed. This is because the apostate would be invited to Islam and all the means of repentance would be exhausted, and if he still refused he would then be killed. An apostate should not be killed just for apostatising due to what is narrated from Jaber:

«أَنَّ امْرَأَةً هِيَ أُمُّ مَرْوَانَ ارْتَدَّتْ، فَأَمَرَ النَّبِيُّ ﷺ بِأَنْ يُعْرَضَ عَلَيْهَا الْإِسْلَامُ،
فَإِنْ تَابَتْ، وَإِلَّا قُتِلَتْ»

“A woman, Umm Marwan, apostatized, so the Prophet commanded that she should be presented Islam, and if she repented (it is accepted). Otherwise, she is to be killed” reported by Al-Bayhaqi and Al-Daraqutni. This narration is used by masses of *Fuqaha*; - Ibn Qudamah uses it as evidence in *Al-Mugni*, Al-Mawardi in *Al-Hawi Al-Kabir* and *Al-Ahkam Al-Sultaniyyah*, Abu Ishaq Al-Shirazi uses it in *Al-Muhadhdhab*, Al-Rafi'i in *Al-Sharh Al-Kabir*, Al-Baghawi in *Al-Tadhhib* and Ibn Al-Jawzi in *Al-Tahqiq*; so it is considered from the *Hasan* (acceptable authority) narrations and is acted upon – in other words, he is asked to report before execution.

Rulings of Clause 'C' are all about the apostate himself; they are not about his children. However, if a Muslim apostatised from Islam and remained upon the faith to which he apostatised, for example he continued to be a Christian, a Jew or a polytheist, and he were then to have children who had the same faith, would his children be considered as apostates? And would they be treated as apostates? Or would they be considered as being of the faith they had at birth?

The answer is that the children of the apostate who are born before their father's apostasy are considered as Muslims without any doubt. However, if they were to follow their father and apostatise as well, they would be treated as apostates. If they were born after he had apostatised from a disbelieving or an apostate wife, these children would be considered as disbelievers and not as apostates; thus, they would be treated just like the people of the faith they inherited at birth. Hence, every child born after his father's apostasy from a disbelieving wife or an apostate wife, would be judged as a disbeliever since he or she would have been born from two disbelieving parents. Therefore, if the two parents became Jews or Christians i.e. from the People of the Book, he or

she would be treated as the People of the Book would be treated, and if the two parents became polytheists, he or she would be treated as a polytheist. This is so because Ibn Mas'ud reported:

«أَنَّ رَسُولَ اللَّهِ ﷺ وَسَلَّمَ لَمَّا أَرَادَ قَتْلَ أَبِيكَ (عقبة بن أبي معيط) قَالَ مَنْ لِلصَّبِيِّ قَالَ

النَّارُ»

“When the Messenger of Allah ﷺ wanted to execute your father (Uqbah Ibn Abi Mu'it), the latter said: “What about the children?” He ﷺ said: “Hell fire” (reported by Abu Dawud, Al-Hakim authenticated it, and Al-Dhahabi agreed with him). In the narration of Al-Daruqutni:

«النَّارُ لَهُمْ وَلِأَبَائِهِمْ»

“Hell fire for them and for their father”. It is also the case since in *Sahih* of Al-Bukhari in the section of the people of the abode, in the book of *Jihad*,

«مَرَّ بِي النَّبِيُّ ﷺ بِالْأَبْوَاءِ - أَوْ يَوْدَانَ - وَسُئِلَ عَنْ أَهْلِ الدَّارِ، يُبَيِّتُونَ مِنْ

الْمُشْرِكِينَ فَيُصَابُ مِنْ نِسَائِهِمْ وَذُرَارِيِّهِمْ، قَالَ ﷺ: هُمْ مِنْهُمْ»

“The Prophet ﷺ passed by me at a place called Al-Abwa or Waddan, and was asked whether it was permissible to attack the pagan warriors at night with the probability of exposing their women and children to danger. The Prophet ﷺ replied, “They (i.e. women and children) are from them (i.e. polytheists)”. Therefore, every child born to two disbelieving parents is considered a disbeliever and the rule pertaining to the disbelievers applies to him.

Hence, those who apostatised from Islam and became non-Islamic sects, such as the Druze, the Bahai', the Qadiani and the like, are not treated as apostates since they didn't apostatise but their ancestors were the apostates and they were ,therefore, born with two disbelieving parents. Thus, they are judged as

disbelievers and they will be treated as such. Moreover, since they have not apostatised to a faith from among the People of the Book i.e. they have not apostatised to Christianity or to Judaism, they will be ,therefore, treated as polytheists. Hence, their slaughtered meat will not be eaten and their women will not be wedded since the non-Muslims are either considered to be People of the Book or polytheists and there is no third category. This is why the Messenger of Allah ﷺ said about the Magi of Hajar as narrated by Al-Hasan Bin Muhammad Bin Al-Hanafiyya:

«فَمَنْ أَسْلَمَ قَبْلَ مِنْهُ، وَمَنْ لَمْ يُسْلَمْ ضُرِبَتْ عَلَيْهِ الْجِزْيَةُ، غَيْرَ نَاكِحِي نِسَائِهِمْ وَلَا آكِلِي ذَبَائِحِهِمْ»

“Whoever embraces Islam then accept them, and whoever does not then impose Jizya upon them, but do not wed their women or eat their slaughtered food” (Al-Hafiz said in *Al-Dirayah*: “narrated by ‘Abd Al-Razzaq and Ibn Abi Shaybah, it is a *Mursal* narration with a good chain”). As for those who apostatised from Islam and became Christians - as in the case in Lebanon with the family of Shihab; this family’s forefathers were Muslims and they apostatised to Christianity and their children were born as Christians - these people and their like will be treated as People of the Book.

As for Clauses 'D' and 'E', their evidence is derived from the fact that the Messenger of Allah ﷺ allowed the Jews and the Christians to drink alcohol and accepted their marriage and divorce proceedings; thus, his acceptance serves as a specification of the general rule. However, the approval of the Messenger of Allah ﷺ with regard to the disbelievers’ marriage is given only when the two spouses are disbelievers, but if the husband were Muslim and if the wife were either Christian or Jew, the rules of the *Shari’ah* would then be applied upon both of them. It is not feasible for the wife to be Muslim and the husband to be disbeliever for this is unlawful. Allah (swt) says:

﴿فَلَا تَرْجِعُوهُمْ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَّهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ﴾

“Then do not return them to the disbelievers; they are not lawful [wives] for them, nor are they lawful [husbands] for them.” (TMQ 60:10). Therefore, it is forbidden for a Muslim woman to marry a non-Muslim, and if she did her marriage would be unlawful.

As for Clause 'F', the evidence with respect to the implementation of all the rules of Islam is derived from all what has just been mentioned that the disbeliever is obligated to abide by the foundations and the branches, thus, he is commanded to submit to all the rules of Islam. This is general, and it includes the *Dhimmi* and the non-*Dhimmi* from among those who live under the authority of Islam. Hence, all the disbelievers who enter *Dar Al-Islam* must be subjected to the rules of Islam except the '*Aqeedah* matters, the rules related to '*Aqeedah* matters and any action which the Messenger of Allah ﷺ allowed them to do whether these disbelievers were *Dhimmi*, under covenant or asylum seekers. However, the ambassadors and their likes are excluded from this and the rules of Islam would not be implemented upon them for they would be given what is known as diplomatic immunity. This is so because Ahmed reported on the authority of Abu Wa'il who said:

«جَاءَ ابْنُ النَّوَاحَةِ وَابْنُ أُثَالٍ، رَسُولًا مُسْلِمَةً إِلَى النَّبِيِّ ﷺ، فَقَالَ لَهُمَا:
أَتَشْهَدَانِ أَنِّي رَسُولُ اللَّهِ؟ قَالَا: نَشْهَدُ أَنَّ مُسْلِمَةً رَسُولُ اللَّهِ، فَقَالَ النَّبِيُّ ﷺ:
آمَنْتُ بِاللَّهِ وَرُسُلِهِ، لَوْ كُنْتُ قَاتِلًا رَسُولًا لَقَتَلْتُكُمَا، قَالَ عَبْدُ اللَّهِ: قَالَ: فَمَضَتْ السُّنَّةُ
أَنَّ الرُّسُلَ لَا تُقْتَلُ»

“Ibn Nawwaha and Ibn Uthal came to the Messenger of Allah ﷺ as Musaylima envoys - the liar - and the Messenger of Allah ﷺ said to them “Do you bear witness that I am the Messenger of Allah?” They said “We bear witness that

Musaylima is the Messenger of Allah.” Upon this the Messenger of Allah ﷺ said: I believe in Allan and His Messengers. “I give you security by Allah and His Messenger. If I were to kill an envoy I would have killed the two of you” Abdullah said: the precedent of the sunna is that envoys are not killed.” (reported by Ahmad and declared *Hasan* by Al-Haythami). So, this narration indicates that it is not permitted to kill the envoys of the disbelievers and nor to apply the punishments (*Uqubat*) upon them. However, this is exclusively applicable upon those who have the capacity of an envoy such as the ambassador and the “*Chargé d'affaires*” and the like. As for those upon whom the capacity of an envoy does not apply such as the Consul and the Commercial Attaché and the like, they would not have any immunity for they do not have the capacity of an envoy. This matter should be referred to the international convention because it is a terminological expression whose reality should be understood by way of looking into the convention and it is part of establishing the *Manat* (reality); in other words, establishing whether they are considered envoys or not.

Article 8

The Arabic language is exclusively the language of Islam and it is the only language used by the State.

The evidence of this article is derived from the fact that although all people are addressed by the Quran as Allah (swt) says

﴿وَلَقَدْ صَرَّفْنَا لِلنَّاسِ فِي هَٰذَا الْقُرْآنِ﴾

“And We have certainly diversified for the people in this Qur'an from every [kind] of example.” (TMQ 17:89),

﴿وَلَقَدْ ضَرَبْنَا لِلنَّاسِ فِي هَذَا الْقُرْآنِ ۝﴾

“And We have certainly presented to the people in this Qur'an from every [kind of] example.” (TMQ 30:58), Allah (swt) has however revealed it in Arabic and made it an Arabic Quran. Allah (swt) says:

﴿قُرْءَانًا عَرَبِيًّا ۝﴾

“An Arabic Quran” (TMQ 12:2) and Allah (swt) also says:

﴿بِلِسَانٍ عَرَبِيٍّ ۝﴾

“In a clear Arabic language” (TMQ 26:195).

Therefore, the Arabic language is the sole language of Islam because it is the sole language of the Quran and because the Quran is the miracle (*Al-Mu'jizah*) of the Messenger of Allah ﷺ. The miracle of the Quran lies in the Quran's expression with this Arabic wording; in other words, with the Arabic wording and style. Although the miracle is found in both the wording and the meaning inseparably, what is meant by its miracle in meaning is not the miracle of what the Quran has brought in terms of meanings and topics for the *Sunnah* has expressed these meanings and topics and yet it is not considered a miracle. The miracle in meaning is established through the fact that the meaning is itself expressed by this wording and this style. Hence, expressing such a meaning in such a wording and in such a style is miraculous. Therefore, the miracle lies in the Arabic wording that expresses the meaning with the Arabic style. In other words, Allah's (swt) saying:

﴿وَلَمَّا تَخَافُ ۝ مِنْ قَوْمٍ خِيَانَةً فَانْزِلْ إِلَيْهِمْ عَلَىٰ سَوَاءٍ ۝﴾

“If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms.” (TMQ 8:58) is in itself incapacitating to all people to produce something similar. Its miracle comes from the splendour in expressing these meanings with this formulation and with such a style. Thus, the miracle was the Arabic wording and the Arabic style that expressed this meaning. Therefore, the miracle in the Quran is confined in its Arabic for it is the origin of the miracle and the subject of the challenge to produce something equal to it. Hence, the Arabic language is an integral part of the Quran that cannot be separated from it. The Quran itself could not be considered Quran without it. It is, therefore, forbidden to translate the Quran for if it were altered it would lose its order and it would no longer be the Quran or be like the Quran; it would rather be a commentary of it, and if its commentary were anything like it then people would not have failed to produce something equal to it when they were challenged to do so. Besides, Allah’s (swt) saying

﴿قُرْءَانًا عَرَبِيًّا﴾

“An Arabic Quran” means that if it were not Arabic it could not be called Quran. Furthermore, we worship Allah (swt) with its wording; therefore, the prayer would not be correct without it since Allah (swt) says:

﴿فَاقْرَءُوا مَا تَيَسَّرَ مِنَ الْقُرْءَانِ﴾

“So read (recite) what is easy [for you] of the Qur’an.” (TMQ 73:20) and the Messenger of Allah ﷺ said:

«لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِفَاتِحَةِ الْكِتَابِ»

“There is no Salah for one who does not recite Fatihatil-Kitab.” (agreed upon through ‘Ubadah). Therefore, the Arabic language is an integral part of Islam.

As for Allah's (swt) saying:

﴿وَأُوحِيَ إِلَيَّ هَذَا الْقُرْآنُ لِأُنذِرَكُمْ بِهِ وَمَنْ بَلَغَ﴾

“And this Qur'an was revealed to me that I may warn you thereby and whomever it reaches.” (TMQ 6:19), this means: so that I warn you with what is in the Quran, and this applies to warning people with its wording and with its commentary for all of this is considered as warning. By contrast, Allah's (swt) saying:

﴿فَاقْرَأُوا﴾

“Read” does not refer to the reading of its commentary and nor does it refer to the reading of its translation, because reading a book means reading its text, and not its translation or commentary. This is ,therefore, not akin to warning with the Book, which means warning with its text and its contents. Besides, Allah (swt) had decreed that the warning of the Messenger of Allah ﷺ is made in Arabic as Allah (swt) says:

﴿نَزَلَ بِهِ الرُّوحُ الْأَمِينُ ﴿١٧٦﴾ عَلَى قَلْبِكَ لِتَكُونَ مِنَ الْمُنذِرِينَ ﴿١٧٧﴾ بِلِسَانٍ عَرَبِيٍّ

مُبِينٍ ﴿١٧٨﴾﴾

“The Trustworthy Spirit has brought it down; Upon your heart, [O Muhammad] - that you may be of the warners -In a clear Arabic language.” (TMQ 26:193-5). This serves as a conclusive evidence that it is forbidden to read the *Fatiha* in prayer in other than the Arabic language, and this nullifies and refutes the argument of those who claimed that the verse in which Allah (swt) says:

﴿وَأُوحِيَ إِلَيَّ هَذَا الْقُرْآنُ﴾

"And this Qur'an was revealed to me." (TMQ 6:19) refers to the permissibility of reading the *Fatiha* in other than the Arabic language for those who do not master Arabic.

This is from the fact that the Arabic language being a fundamental part of Islam. As for the evidence pertaining to the fact that the Arabic language should be exclusively the official language of the State, the evidence for it is that when the Messenger of Allah ﷺ sent letters to Caesar, Kisra and Muqawqas in which he invited them to Islam, those letters were written in Arabic though they could have been translated into their own languages. Although Caesar, Kisra and Muqawqas were not Arabs and although the Messenger of Allah ﷺ wrote the letters to convey Islam to them, the Messenger of Allah ﷺ didn't write his letters in their languages. Hence, this serves as evidence that the Arabic language is exclusively the official language of the State because the Messenger of Allah ﷺ did this. Besides, the fact that the need to translate in order to convey Islam was pressing but the Messenger of Allah ﷺ did not translate serves as an indication for the obligation of restricting the State's address of people to the Arabic language whether the addressees were Arabs or non-Arabs. Therefore, all non-Arab people should learn the Arabic language and it is forbidden for the State's official language to be other than the Arabic language.

Imam Al-Shafi'i outlined in his celebrated book of *Usul* (foundations of jurisprudence) entitled *Al-Risalah* the following: "*Allah (swt) has made it an obligation upon all nations to learn the Arabic tongue following their address with the Quran and their worshipping by it*".

Therefore, all this makes it obligatory for the State to adopt the Arabic language as the exclusive official language.

However, it must be made clear that adopting the Arabic language exclusively as the State's language does not necessarily mean that the State could not use other than the Arabic language since it is permitted for the State to use other than the Arabic language in an official correspondence either for fear of distortion, to acquire vital information, to convey the call to Islam abroad or for any similar reason. This is the case because the Messenger of Allah ﷺ used Hebrew and Syriac. Hence, the ruling stipulates the sole use of the Arabic language when adopting the State's official language rather than preventing the State from using other than the Arabic language.

The question that comes to mind now is: Would it be permitted to have a written and spoken language other than Arabic in the lands ruled by the Islamic State?

The answer to this is that the speaking and the writing of other languages could either be related to the State itself, to the subjects' relationship with the State, to the subjects themselves or to individuals with one another.

If it were related to the State itself or to the State's relations, then in this case it would not be permitted for the language to be other than the language of the state (the Arabic language). This is because the Messenger of Allah ﷺ did not translate his letters to the non-Arabs despite the pressing need to translate in order to convey Islam and this serves as evidence stipulating the obligation of the sole use of the Arabic language in the State's administration and relations or in anything related to it. Based upon this, the State would not have any place in its educational curricula to teach any other language apart from Arabic whether these were the languages of the non-Arab peoples living under the authority of the Islamic State or the peoples living outside the authority of the Islamic State. In the same manner, public schools are prevented from adopting anything other than the Arabic language as an academic language and from introducing other than the Arabic language as a subject because they are obliged to adhere to the State's curricula. Accordingly,

every matter related to the State, to its relations, the relations of its subjects with it or any other matter related to it must be conducted solely in the Arabic language, spoken and written.

However, if speaking and writing in other than the Arabic language were related exclusively to the subjects or related to people's relationships amongst themselves, this would be permitted because the Messenger of Allah ﷺ permitted the translation of other languages into Arabic and permitted the learning of other languages. This indicates that it is permitted to speak and to write in other than Arabic. In a narration from Zayd Ibn Thabit:

«أَنَّ النَّبِيَّ ﷺ أَمَرَهُ أَنْ يَتَعَلَّمَ كِتَابَ الْيَهُودِ حَتَّى كَتَبْتُ لِلنَّبِيِّ ﷺ كُتُبَهُ وَأَفْرَأْتُهُ كُتُبَهُمْ إِذَا كَتَبُوا إِلَيْهِ»

“The Prophet ﷺ commanded him to learn the writing of the Jews. I even wrote letters for the Prophet ﷺ (to the Jews) and also read their letters when they wrote to him.” transmitted by Al-Bukhari. So, this is an evidence for the permissibility of speaking and writing in other than the Arabic language. In the times of the Companions, there were people who used to speak and to write in other than Arabic and they were not forced to learn it, and someone used to interpret for the ruler.

Al-Bukhari reported in the section “History of the Rulers”: “Kharija Bin Zaid Bin Thabit from Zaid Ibn Thabit said:

«أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَمَرَهُ أَنْ يَتَعَلَّمَ كِتَابَ الْيَهُودِ حَتَّى كَتَبْتُ لِلنَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كُتُبَهُ وَأَفْرَأْتُهُ كُتُبَهُمْ إِذَا كَتَبُوا إِلَيْهِ»

“The Prophet ﷺ commanded him to learn the writing of the Jews. I even wrote letters for the Prophet ﷺ (to the Jews) and also read their letters when they wrote to him.” Omar (ra) said in the presence of ‘Ali, ‘Abd Al-Rahman and Uthman: “What is this woman saying?” Abdul-Rahman Ibnu Hatib said: “She is informing you about the man who did so and so to her.” Abu

Hamzah also said: “*I used to translate between Ibn Abbas and other people*”.

Two evidences that indicate the permission of translation are: the narration in which the Messenger ﷺ ordered Zaid Bin Thabit to learn the Book of the Jews and when Umar (ra) asked what that woman was saying - he meant the woman who was found pregnant - ‘Abd Al-Rahman was translating for him. The fact that Abu Hamza used to translate what people would say for Ibn ‘Abbas means that there were people who spoke other than Arabic. Therefore, speaking and writing in other than Arabic is permitted according to the *Sunnah* and to the actions of the Companions. Accordingly, the State would allow the publication of books, newspapers and magazines in other than Arabic, and their publication would not require a permit because it is part of the *Mubah* (permitted) actions. It is also allowed to televise programmes in other than Arabic if these stations belonged to an individual or to a group of people. However, this will be prohibited in the State’s own radio and television stations because everything related to the State must be exclusively in Arabic. As for what is related to people among themselves, it will be permitted for them to use other than Arabic in everything except for any specific issue which was in origin permitted that may lead to harm; in such case, that matter will be prohibited.

Article 9

***Ijtihad* is a duty of sufficiency and every Muslim reserves the right to perform *Ijtihad* provided he meets all its prerequisites.**

The Islamic *Shari’ah* has made *Ijtihad* to deduce the *Shari’ah* rules from the address of the Legislator – i.e. from the *Shari’ah* texts which are revealed by Allah (swt) to the Messenger of Allah ﷺ - an obligation upon the Muslims. The fact that *Ijtihad*

is an obligation has been confirmed through several narrations. The Messenger of Allah ﷺ said:

«إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ ثُمَّ أَصَابَ فَلَهُ أَجْرَانِ، وَإِذَا حَكَمَ فَاجْتَهَدَ ثُمَّ أَخْطَأَ فَلَهُ أَجْرٌ»

“When a judge utilizes his skill of judgement and comes to a right decision, he will have a double reward, but when he uses his judgement and commits a mistake, he will have a single reward.” (agreed upon through Amru Bin Al-Aas). He ﷺ also said:

«وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ»

“and a man judged people without knowledge, he is in Hell fire” (transmitted by the compilers of the *Sunan* and Al-Hakim and Al-Tabarani with a *Sahih* chain). This confirms that the judge must be acquainted with what he judges on. It is also reported that he ﷺ said to Ibn Mas’ud:

«أَفْضُ بِالْكِتَابِ وَالسُّنَّةِ إِذَا وَجَدْتَهُمَا، فَإِذَا لَمْ تَجِدِ الْحُكْمَ فِيهِمَا فَاجْتَهِدْ رَأْيَكَ»

“Judge by the Book and the Sunnah wherever you find (the ruling) in them, and if you don’t find the ruling in them, then do Ijtihad (use your judgement)” as mentioned by Al-Amidi in *Al-Ahkam* and Al-Razi in *Al-Mahsul*. He ﷺ said to Mu’ath and Abu Moussa Al-Ash’ari when he was about to dispatch them to Yemen:

«بِمَ تَقْضِيَانِ؟ فَقَالَا: إِنْ لَمْ نَجِدِ الْحُكْمَ فِي الْكِتَابِ وَالسُّنَّةِ قِيسْنَا الْأَمْرَ بِالْأَمْرِ، فَمَا كَانَ أَقْرَبَ إِلَى الْحَقِّ عَمِلْنَا بِهِ»

“What will you judge by?” They said: “If we don’t find the rule in the Book or in the Sunnah, we will make analogy (Qiyas) between things; whichever (according to our judgement)

is closer to the right is adopted.” (mentioned by Al-Amidi in *Al-Ahkam* and Abu Al-Husain in *Al-Mu'tamad*). This analogy is in itself an *Ijtihad* to deduce the rule, and the Messenger of Allah ﷺ approved it. It is also reported that the Messenger of Allah ﷺ said to Mu'ath when he appointed him as governor to Yemen:

«كَيْفَ تَقْضِي إِنْ عَرَضَ لَكَ قَضَاءٌ؟ قَالَ: أَقْضِي بِكِتَابِ اللَّهِ، قَالَ: فَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ؟ قَالَ: فَسُنَّةُ رَسُولِ اللَّهِ ﷺ، قَالَ: فَإِنْ لَمْ يَكُنْ فِي سُنَّةِ رَسُولِ اللَّهِ ﷺ؟ قَالَ: أَجْتَهِدُ رَأْيِي وَلَا آلُو. قَالَ: فَضَرْبَ صَدْرِي فَقَالَ: الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ ﷺ لِمَا يُرْضِي رَسُولَهُ»

“What will you rule by?” He said: “By the Book of Allah.” He ﷺ said: “What if you do not find the rule?” He said: “By the Sunnah of the Messenger of Allah.” He said: “What if you do not find the rule?” He said: “I will exert my own opinion.” Upon this the Messenger of Allah ﷺ said: “Praise be to Allah Who guided the envoy of the Messenger of Allah to what satisfies His Messenger” (transmitted by Ahmad and Al-Tirmidhi and Al-Darimi and Abu Dawud and was authenticated by Al-Hafiz Ibn Kathir Al-Basrawi who said that the narration is *Hasan Mashur* and relied upon by the scholars of Islam).

This clearly indicates the approval of the Messenger of Allah ﷺ with regard to Mu'ath's performance of *Ijtihad*. Furthermore, the knowledge of the rules is linked and is related to *Ijtihad* since the realisation and the comprehension of the rules could not be established without it. Hence, *Ijtihad* becomes obligatory because the *Shari'ah* principle stipulates:

(ما لا يتم الواجب إلا به فهو واجب)

“That, without which the obligation cannot be accomplished, is itself an obligation”.

In origin, the deduction of the rules is performed by *Mujtahideen* (those capable of *Ijtihad*) because the knowledge of

Allah's rule in a given matter cannot be reached except through *Ijtihad*, and *Ijtihad* ,therefore, becomes indispensable. The scholars of *Usul Al Fiqh* (the principles of jurisprudence) have indicated that *Ijtihad* is a duty of sufficiency upon the Muslims and that it is forbidden for Muslims to be without a single *Mujtahid* at any given time, and that if they all agreed upon forsaking *Ijtihad*, they would be sinful because the only way to know the *Shari'ah* rules is through *Ijtihad*. Therefore, if an era were devoid of at least one *Mujtahid* upon whom it could be relied in perceiving the rules, it would lead to the paralysis of the *Shari'ah* and this is forbidden. Besides, the *Shari'ah* texts make it incumbent upon Muslims to perform *Ijtihad* because these *Shari'ah* texts (i.e. the Book and the *Sunnah* and nothing else) have not come in a detailed manner but rather in a general manner that can be applied to every reality faced by humanity. Their understanding and the deduction of the rule of Allah require the exhausting of efforts in order to obtain the *Shari'ah* rule from them for every matter. This *Ijtihad* is not an impossible task nor is it extremely difficult; rather, it is the process of exhausting one's effort in order to acquire the *Shari'ah* rules with the least amount of doubt. In other words, it is the understanding of the *Shari'ah* texts with the exhausting of one's utmost effort in order to attain this understanding and to perceive the *Shari'ah* rule. This is in fact within everyone's reach. *Ijtihad* was natural and evident to the Muslims in the early times and it had no prerequisites. However, since the understanding of the classical Arabic language started to weaken and since people started to devote less attention to discerning the *Deen*, it has become incumbent upon the *Mujtahid* to know the narrated evidences (*Adillah Sam'iyah*) from which the principles and the rules are deduced. It has also become incumbent upon him to discern the meaning of expressions which are commonly used in the classical Arabic language and in the usage of rhetoric. There are no other conditions apart from these two to performing *Ijtihad*. Therefore, in addition to being a duty of sufficiency upon the Muslims,

Ijtihad is within the reach of all the Muslims. These are all the evidences for this article.

Article 10

All the Muslims should bear the responsibility of Islam. There are no clergymen in Islam and the State should prohibit any sign of their presence among the Muslims.

Although *Mujtahids* are scholars, however not every scholar is necessarily a *Mujtahid* since a scholar could either be a *Mujtahid* or a *Muqallid* (imitator). If the Muslim were to take the *Shari'ah* rule in order to act upon, then, it requires some consideration: if he took the rule from a *Mujtahid*, he in this case would be emulating the *Mujtahid*. If he took it from a non-*Mujtahid*, he would be learning that rule from the person he had taken it from, and he would not be emulating him. However, if the Muslim was to take the rule in order to learn it, he would be learning the rule irrespective of whether he took it from a *Mujtahid* or a non *Mujtahid*. Therefore, these scholars - whether *Mujtahids* or otherwise - are not clergymen since none of them has any right to legitimise or prohibit anything and they are just like any other Muslim regarding every single *Shari'ah* rule. None of them should distinguish himself from the rest of the Muslims in anything with regards to the *Shari'ah* rules regardless of how high his rank is in terms of knowledge, *Ijtihad* and respect. Hence, what is *Haram* for others does not become allowed for the scholar and nor does the *Wajib* upon others become *Mandub* (recommended) for him. He is rather like any other individual Muslim. Therefore, the idea of clergymen held by Christians has no existence in Islam. The concept of clergymen is specific to Christians because a clergyman does legitimise and prohibit rules to them. Thus, attributing such a term to the Muslim scholar might give the impression of attributing the Christian concept to the Muslim scholars despite the fact that Muslim scholars do not

allow and nor do they prohibit anything. Therefore, it is not fitting to attribute the term of clergyman to a Muslim scholar.

There are explicit narrations prohibiting the emulation of Christians and Jews. Abu Sa'id Al-Khudri narrated that the Messenger of Allah ﷺ said:

«لَتَتَّبِعَنَّ سَنَنَ الَّذِينَ مِنْ قَبْلِكُمْ شِرًّا يَشِيرُ وَذِرَاعًا بِذِرَاعٍ، حَتَّى لَوْ دَخَلُوا فِي جُحْرِ ضَبٍّ لَاتَّبَعْتُمُوهُمْ، قُلْنَا: يَا رَسُولَ اللَّهِ، الْيَهُودَ وَالنَّصَارَى؟ قَالَ: فَمَنْ»

“You would tread the same path as was trodden by those before you inch by inch and step by step so much so that if they had entered into the hole of the lizard, you would follow them in this also. We said: Allah's Messenger, do you mean Jews and Christians (by your words) those before you”? He said: Who else (than those two religious groups)?” (Agreed upon with the words from Muslim) This narration has been said within the context of prohibition. Hence, the emulation of the Jews and the Christians is - as it stands - prohibited, let alone if this emulation were to lead to the generating of a *Kufr* concept among the Muslims. Considering the Muslim scholar as a clergyman is an emulation of the Christians who regard their scholars as clergymen and it also transfers the Christian concept of clergyman to the Muslim scholar; therefore, it is strictly prohibited in terms of emulation and it is classified as even more strictly prohibited in terms of introducing the concept. Therefore, it would be wrong to refer to the Muslim scholar as a clergyman and it is forbidden for the scholars to consider themselves as clergymen according to the Christians' concept of clergyman. If someone was found claiming this according to the understanding mentioned, he will be prohibited and punished since he will have committed a prohibited act. In addition, the Prophet ﷺ did not differentiate from the companions in terms of a specific dress or appearance. Al-Bukhari reported in his *Sahih* from Anas Bin Malik who said:

«بَيْنَمَا نَحْنُ جُلُوسٌ مَعَ النَّبِيِّ ﷺ فِي الْمَسْجِدِ، دَخَلَ رَجُلٌ عَلَى جَمَلٍ فَأَنَاحَهُ فِي الْمَسْجِدِ ثُمَّ عَقَلَهُ، ثُمَّ قَالَ لَهُمْ: أَيُّكُمْ مُحَمَّدٌ؟ - وَالنَّبِيُّ ﷺ مُتَّكِيٌّ بَيْنَ ظَهْرَانِيهِمْ - فَقُلْنَا: هَذَا الرَّجُلُ الْأَبْيَضُ الْمُتَّكِيُّ. فَقَالَ لَهُ الرَّجُلُ: يَا ابْنَ عَبْدِ الْمُطَّلِبِ، فَقَالَ لَهُ النَّبِيُّ ﷺ قَدْ أَجَبْتُكَ...»

“A man entered the mosque on camel and made it kneel down, and then tied his leg with rope. He then asked: Who among you is Muhammad? The Messenger of Allah ﷺ was sitting leaning upon something among them. We said to him: This white (man) who is leaning. The man said: O son of ‘Abd Al-Muttalib. The Prophet ﷺ said; I already responded to you.”
For these reasons, this article has been drafted.

Article 11

Conveying the Islamic *Da’wa* (call to Islam) is the fundamental task of the State.

This article has been drafted because as well as being an obligation upon the Muslims, conveying the Islamic *Da’wa* is also an obligation upon the State. Although conveying the call to Islam forms a part of the implementation of *Shari’ah* in the relationships and although it is a *Shari’ah* rule that the State must implement as the individual Muslim does, it is considered as the basis upon which its relationships with other states is built. In other words, it is the basis upon which the whole of the State’s foreign policy is built. Therefore, conveying the Islamic *Da’wa* is the State’s main task.

The evidence that conveying the call to Islam is an obligation is reflected in the words of Allah (swt)

﴿وَأُوحِيَ إِلَيَّ هَذَا الْقُرْآنُ لِأُنذِرَكُمْ بِهِ وَمَنْ بَلَغَ﴾

“And this Qur'an was revealed to me that I may warn you thereby and whomever it reaches.” (TMQ 6:19); meaning to warn whoever this Quran reaches. Hence, the warning is to you Muslims and it is also a warning to those whom you convey it to; thus, it is an invitation to them to convey it on behalf of the Messenger of Allah ﷺ. In other words, it is not only a warning to you but rather a warning to you and to all those whom the Quran reaches. The Messenger of Allah ﷺ said:

«نَصَرَ اللَّهُ عَبْدًا سَمِعَ مَقَالِي فَحَفِظَهَا وَوَعَاَهَا وَأَدَّاهَا، فَرُبَّ حَامِلٍ فِقْهِ غَيْرِ فِقْهِهِ، وَرُبَّ حَامِلٍ فِقْهِهِ إِلَى مَنْ هُوَ أَفْقَهُ مِنْهُ»

“May Allah cause to flourish a slave (of His) who hears my words and memorize, perceive, and convey them. There are those who have knowledge but no understanding, and there may be those who convey knowledge to those who may have more understanding of it than they do.” (in *Musnad Al-Shafi'i* through ‘Abd Allah Bin Mas’ud). Allah (swt) also said

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ﴾

“ And let there be [arising] from you a nation (a band of people) inviting to [all that is] good.” (TMQ 3:104), and the goodness is Islam. He (swt) also says

﴿وَمَنْ أَحْسَنُ قَوْلًا مِّمَّنْ دَعَا إِلَى اللَّهِ﴾

“ And who is better in speech than one who invites to Allah and does righteousness and says, "Indeed, I am of the Muslims."” (TMQ 41:33), in other words, to the *Deen* of Allah. All of these texts indicate that conveying the call to Islam is obligatory and this obligation is general and encompasses the State as well as the Muslims as a whole.

As for the fact that conveying the *Da'wa* must be the State's main activity, its evidence is derived from the words and actions of the Prophet ﷺ. He ﷺ said

«أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنَّ لَا إِلَهَ إِلَّا اللَّهُ وَيُؤْمِنُوا بِي وَبِمَا جِئْتُ بِهِ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا، وَحَسَابُهُمْ عَلَى اللَّهِ»

“I have been commanded to fight against people, till they testify to the fact that there is no god but Allah, and believe in me (that) I am the Messenger (from the Lord) and in all that I have brought. And when they do it, their blood and riches are guaranteed protection on my behalf except where it is justified by law, and their affairs rest with Allah.” (agreed upon, with the wording from Muslim). Al-Bukhari reported from ‘Urwah B. Al-Ja’d from the Prophet ﷺ:

«الْخَيْلُ مَعْقُودٌ فِي نَوَاصِيهَا الْخَيْرُ إِلَى يَوْمِ الْقِيَامَةِ»

“There is goodness in the forelocks of horses till the Day of Resurrection.” and the horse is an allusion to the continuation of the obligation of *Jihad*. Additionally, *Jihad* is not restricted to whether the leader is righteous or immoral since it also indicates the continuation of the *Jihad* with the righteous and immoral as long as they are Muslim. Al-Bukhari used this narration as evidence for *Jihad* continuing with the righteous and the immoral leader when he separated a section with the title “Chapter Jihad Continues with the Righteous and the Immoral due to the words of the Prophet ﷺ

«الْخَيْلُ مَعْقُودٌ فِي نَوَاصِيهَا الْخَيْرُ إِلَى يَوْمِ الْقِيَامَةِ»

“There is goodness in the forelocks of horses till the Day of Resurrection.” Ahmad also used it as an evidence in the same manner as Al-Bukhari. And in the same manner, it is reported by Said Bin Mansur through Anas who said that the Messenger of Allah ﷺ said

«وَالْجِهَادُ مَا ضِ مِنْهُ بَعَثَنِي اللَّهُ إِلَى أَنْ يُقَاتِلَ آخِرُ أُمَّتِي الدَّجَالَ، لَا يُبْطَلُهُ
جَوْرُ جَائِرٍ وَلَا عَدْلُ عَادِلٍ»

“And Jihad will be performed continuously since the day Allah sent me as a Prophet until the day the last member of my community will fight with the Dajjal (Antichrist). The tyranny of any tyrant and the justice of any just (ruler) will not invalidate it”. This Hadeeth was also narrated by Abu Dawud and Al-Tirmidhi didn’t comment on it). So the order to fight until those who resist say that there is no god but Allah and that Muhammad is the Messenger of Allah, serves as evidence about the obligation of conveying the call to Islam upon the State. The fact that this conveying, which is *Jihad*, is ongoing until the last of the *Ummah* fights the *Dajjal* is evidence that the State’s constant activity is *Jihad* that is not permitted to be disrupted. The two narrations together indicate that the call to Islam is a constant action that is not to be interrupted; therefore, it is the main duty because the main duty is the action that is constantly performed under all circumstances and without any disruption.

Besides, the Messenger of Allah ﷺ was in a constant state of *Jihad* ever since he settled in Madinah until he ﷺ departed this world and *Jihad* was the main activity. The rightly guided *Khulafaa’* came after him and followed in his footsteps assuming *Jihad* as their main duty. So the State that the Messenger of Allah ﷺ founded and headed undertook *Jihad* as its main duty; when he (saw) departed, the State was headed by the *Khulafaa’* from among the Companions and similarly the State’s main task was *Jihad*. Therefore, the evidence stipulating that conveying the Islamic *Da’wa* is the State’s main task is derived from the *Sunnah* and the *Ijma’* of the Companions.

Additionally, the Messenger of Allah ﷺ used to convey the call to Islam since Allah (swt) sent him as a Prophet until he departed this world. He ﷺ was the Head of State in Madinah and since he settled there he made his foreign policy the main activity

and the State's focus of attention. The activities undertaken ranged from raids, expeditions, intelligence gathering and signing treaties. All these activities were for the sake of conveying Islam and its *Da'wa* to all people. When the Messenger of Allah ﷺ sensed the strength of the State and its ability to convey the *Da'wa* internationally, he dispatched twelve envoys simultaneously to twelve monarchs inviting them to Islam, amongst them the Kings of Persia and Rome. Muslim reported from Anas Bin Malik:

«أَنَّ نَبِيَّ اللَّهِ ﷺ كَتَبَ إِلَى كِسْرَى وَإِلَى قَيْصَرَ وَإِلَى النَّجَاشِيِّ وَإِلَى كُلِّ جَبَّارٍ
يَدْعُوهُمْ إِلَى اللَّهِ تَعَالَى»

“The Prophet of Allah ﷺ wrote to Chosroes (King of Persia), Caesar (Emperor of Rome), Negus (King of Abyssinia) and every (other) despot inviting them to Allah, the Exalted”. When he ﷺ was satisfied about the might of the State within the Arabian Peninsula and about the spread of the *Da'wah* among the Arabs and people started to embrace the *Deen* of Allah (swt) in droves, he ﷺ looked towards conquering the Romans; hence, the battles of Mu'ta and Tabuk took place. This also serves as evidence that conveying the *Da'wa* is an obligation upon the State and that it is its main task.

Article 12

The Book, the *Sunnah*, the *Ijmaa'* of the *Sahabah* and the *Qiyas* (analogy) are the only evidences considered in *Shari'ah* laws, and it is not permitted to adopt any legislation from other than these evidences.

This article does not imply that the State will adopt a method of *Ijtihad*; it rather means that the State will follow a specific method when adopting the *Shari'ah* rules. This is because the adoption of the *Shari'ah* rules could either be obligatory in some cases or, in other cases, permitted for the State. If this

adoption were to be conducted in two contradictory methods, it would lead to a contradiction in the basics upon which the adoption has been conducted. Therefore, the State ought to adopt a specific method in adopting the *Shari'ah* rules. Three reasons prompted the adoption of such a method in the adoption of rules:

Firstly, the rule by which the Muslim should proceed is a *Shari'ah* rule and not a rational rule; in other words, it is the rule of Allah in the matter and not the rule laid down by man. Therefore, the evidence from which this rule is deduced must be what the Revelation has brought.

Secondly, the confirmation that the evidence - from which the rule has been deduced - has been brought by way of Revelation must be conclusive. In other words, it is imperative that the evidence, from which the *Shari'ah* rule has been deduced, has conclusive and decisive, not indefinite, evidence that it has been brought by way of Revelation. This is because it is part of the *Usul* (foundations) and not part of the branches; thus, to be most likely or probable is not sufficient since it is part of the '*Aqeedah* matters and not part of the *Shari'ah* rules. This is so because the evidence required to deduce the rule from is evidence which has come by way of Revelation, not just any evidence. Therefore, it is imperative to decisively confirm that it has been brought by way of Revelation and the process of confirming that it has been brought by Revelation is an '*Aqeedah* matter not a *Shari'ah* rule. Therefore, it is imperative to establish that the evidence has come by way of Revelation by definite evidence because matters of '*Aqeedah* can only be taken conclusively.

Thirdly, what is conclusive is that man's behaviour in life proceeds according to his concepts about life. Although the viewpoint about life has the '*Aqeedah* as its basis, it is nevertheless formed of a host of concepts, criteria and convictions which are existent in the *Ummah*. Not all of these thoughts, which are reflected in this host of concepts, criteria and convictions are part of the matters of '*Aqeedah*. Rather, some of them are from the matters of '*Aqeedah* and others are part of *Shari'ah* rules, and

since rules are deduced with the least amount of doubt it is ,therefore, feared that if the origin of the rules has not been conclusively confirmed as being brought by way of Revelation, then some of the non-Islamic thoughts may creep into the *Ummah* due to the presence of *Shari'ah* rules deduced from a foundation which Revelation has not brought in the first instance. If it is widespread and used over a long period of time it will influence the viewpoint about life held by the *Ummah* and consequently affects its behaviour. Accordingly, it is imperative to confirm that the evidences, upon which rules to be implemented by the State are deduced, must be those evidences brought by Revelation.

It is for these three reasons that the adoption of a specific method, according to which the *Shari'ah* rules are adopted, is imperative. As for the fact that the evidences are confined exclusively to the four general evidences mentioned above, this is confirmed through study. We have studied and scrutinised the evidences that have been confirmed by a conclusive evidence to have been brought by way of Revelation and we have not found anything other than these four at all.

As for the Quran, the evidence about the fact that it has been brought by way of Revelation from Allah (swt) in letter and spirit is conclusive. The miracle of the Quran serves as conclusive evidence that it is indeed the Word of Allah (swt) and not the word of man. Therefore, the conclusive evidence has been established that the Quran is the Word of Allah (swt). The Quran itself, which has been conclusively confirmed as being the Word of Allah by the evidence of the miracle, states that it is Revelation that descended upon the Messenger of Allah ﷺ; Allah (swt) says:

﴿ تَزَلَّ بِهِ الرُّوحُ الْأَمِينُ ﴿٢٦﴾ عَلَى قَلْبِكَ لِتَكُونَ مِنَ الْمُنذِرِينَ ﴿٢٧﴾ ﴾

“The Trustworthy Spirit has brought it down; Upon your heart, [O Muhammad] - that you may be of the warners.” (TMQ 26:193-4);

﴿وَأُوحِيَ إِلَيَّ هَذَا الْقُرْآنُ﴾

“And this Quran has been revealed to me.” (TMQ 6:19);

﴿قُلْ إِنَّمَا أُنذِرُكُم بِالْوَحْيِ﴾

“Say, "I only warn you by revelation."” (TMQ 21:45);

﴿مَا أَنزَلْنَا عَلَيْكَ الْقُرْآنَ لِتَشْقَىٰ﴾

“We have not revealed the Quran to you that you may be unsuccessful (become distressed).” (TMQ 20:1);

﴿وَإِنَّكَ لَتَلْقَى الْقُرْآنَ﴾

“And indeed, [O Muhammad], you receive the Qur'an.” (TMQ 27:6);

﴿فَحُنْزَلْنَا عَلَيْكَ الْقُرْآنَ﴾

“Indeed, it is We who have sent down to you, [O Muhammad], the Qur'an progressively.” (TMQ 76:23) and

﴿أَوْحَيْنَا إِلَيْكَ قُرْآنًا عَرَبِيًّا﴾

“We have revealed to you an Arabic Qur'an.” (TMQ 42:7).

These are conclusive evidences establishing the fact that the Quran has been brought by way of Revelation from Allah (swt).

As for the *Sunnah*, the conclusive evidence about the fact that it is Revelation which has come from Allah (swt) in meaning, and that the Messenger of Allah ﷺ expressed it by his own words

is what came clearly indicated in the Verses of the Quran. Allah (swt) says:

﴿وَمَا يَنْطِقُ عَنِ الْهَوَىٰ ۖ إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ﴾

“Nor does he speak from [his own] inclination; It [the Quran] is nothing but revelation sent down to him.” (TMQ 53:3-4);

﴿إِنَّا أَوْحَيْنَا إِلَيْكَ كَمَا أَوْحَيْنَا إِلَىٰ نُوحٍ وَالنَّبِيِّينَ مِنْ بَعْدِهِ ۚ﴾

“We have revealed to you, [O Muhammad], as We revealed to Noah and the Prophets after him.” (TMQ 4:163);

﴿إِن أَتَّبِعُ إِلَّا مَا يُوحَىٰ إِلَيَّ﴾

“I only follow what is revealed to me from my Lord.” (TMQ 6:50); “Say,

﴿قُلْ إِنَّمَا أَتَّبِعُ مَا يُوحَىٰ إِلَيَّ﴾

“I only follow what is revealed to me.”” (TMQ 7:203); “Say,

﴿قُلْ إِنَّمَا أُنذِرُكُمْ بِالْوَحْيِ﴾

“I only warn you by revelation.”” (TMQ 21:45) And Allah (swt) says

﴿وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا﴾

“And whatever the Messenger has given you - take; and what he has forbidden you - refrain from.” (TMQ 59:7)

These are clear evidences denoting that whatever the Messenger of Allah ﷺ has uttered in terms of the *Sunnah* has come by way of Revelation; they also serve as clear evidences

denoting that Allah (swt) has explicitly ordered us in the Quran to abide by what the Messenger of Allah ﷺ ordered us and to abstain from what he ﷺ prohibited for us. This command is general. Hence, the evidence about the fact that the *Sunnah* has come by way of Revelation is conclusive because it has been established by a conclusive Quranic text that is definite in its intended indication.

As for the *Ijma'* of the Companions, which is considered a *Shari'ah* evidence, it means the general consensus of the Companions that such rule is a *Shari'ah* rule, or their general consensus that the rule pertaining such and such matter is so and so. Hence, if they unanimously consented about a certain rule as being a *Shari'ah* rule, their *Ijma'* (general consensus) would be considered a *Shari'ah* evidence.

The evidence for this is reflected in two matters: firstly, Allah (swt) praised them in the Quran through a text that is conclusive and definite in meaning. Allah (swt) said:

﴿وَالسَّابِقُونَ الْأَوَّلُونَ مِنَ الْمُهَاجِرِينَ وَالْأَنْصَارِ وَالَّذِينَ اتَّبَعُوهُمْ
بِإِحْسَنِ رِضَى اللَّهِ عَنْهُمْ وَرَضُوا عَنْهُ وَأَعَدَّ لَهُمْ جَنَّاتٍ تَجْرِي تَحْتِهَا الْأَنْهَارُ
خَالِدِينَ فِيهَا أَبَدًا ذَلِكَ الْفَوْزُ الْعَظِيمُ﴾

“And the first forerunners [in the faith] among the Muhajireen and the Ansar and those who followed them with good conduct - Allah is pleased with them and they are pleased with Him, and He has prepared for them gardens beneath which rivers flow, wherein they will abide forever. That is the great attainment.” (TMQ 9:100)

This praise by Allah (swt) of the *Muhajirin* (emigrants), the *Ansar* (Helpers) and those who followed them with righteousness, due to their emigration and their support, is a praise of the Companions because those praised are the

Companions and the meaning of the verse is confined to them. This praise is for all of them and the truthfulness of those whom Allah (swt) praises in such a way is conclusive.

The second matter is that we have taken our *Deen* from those Companions since they are the ones who transmitted to us the very Quran that had descended upon our master Muhammad ﷺ. Hence, if we assumed that a flaw were to creep into one single matter from among what they had agreed upon, this means that the flaw could creep into the Quran; in other words, the flaw could creep into the *Deen* which we had taken from them and this is impossible from the angle of *Shari'ah*. Therefore, although it would not be rationally impossible for the Companions to unanimously agree upon an erroneous matter - for this could happen since they are only human - however, this could not possibly happen to them from the *Shari'ah* point of view since if this were possible, it would then be possible for error to creep into the *Deen*. In other words, it would be possible for error to creep into the fact that this Quran that we have today is the very same Quran that descended upon our master Muhammad ﷺ, and this is impossible from the *Shari'ah* point of view; thus, it would be impossible for them to generally consent on something erroneous.

This serves as a conclusive proof that the *Ijma'* of the Companions is a *Shari'ah* evidence. In addition, Allah (swt) says:

﴿إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُمُ الْحَافِظُونَ﴾

“Indeed, it is We who sent down the Qur'an and indeed, We will be its guardian.” (TMQ 15:9). Therefore, Allah (swt) has promised to protect the Quran and he who transmitted this Quran is he who protected it; thus, this serves as evidence about the truthfulness of their *Ijma'* in transmitting and compiling the Quran. Hence, it serves as proof about the soundness of their general consensus because if it were possible for their consensus

to be flawed, it would be possible for the transmission of the Quran to be flawed and it would be possible for it to be unprotected. Therefore, since the non-protection of the Quran is impossible, as indicated by the Verse, then it is impossible for error to creep into its transmission or its compiling or its protection. Hence, the *Ijma'* of the Companions is a conclusive evidence.

However, what should be made absolutely clear is that the *Ijma'* of the Companions stipulating that such and such rule is a *Shari'ah* rule is simply uncovering an evidence; in other words, there exists for this rule an evidence derived either from the action, words or silence of the Messenger of Allah ﷺ, and that the Companions transmitted the rule but did not transmit the evidence. Hence, their transmission of the rule discloses the fact that there exists an evidence for that rule. Therefore, their general consensus does not mean that their personal opinions are in agreement over a specific matter for their personal opinions are not Revelation and each one of them is not infallible; thus, a companion's opinion cannot be regarded as a *Shari'ah* evidence. This is because the *Shari'ah* evidence must be brought by way of Revelation in order to be considered as *Shari'ah* evidence, and the Companions' opinions are not like that; therefore, they cannot be considered as *Shari'ah* evidence whether these were the opinions upon which they agreed or the opinions over which they disagreed. For this reason, the *Ijma'* of the Companions does not mean their agreement upon one single opinion, it rather means their general consensus about the fact that a rule is a *Shari'ah* rule, or such and such rule is a *Shari'ah* rule; in this case, it is not their opinion but rather a general consensus that it is from *Shari'ah*; hence, the *Ijma'* of the Companions is simply uncovering an evidence.

As for *Qiyas*, it is also *Shari'ah* evidence. Linguistically it means estimating and in the *Usul* terminology it is the making of analogy between a known matter upon another known matter in

order to either confirm a rule for both of them or to disclaim it for both of them due to a mutual factor between them. Thus, it is comparing the rule of a known matter to another known matter due to their association in the *'Illah* (the reason) of the rule. Accordingly it is the extending of the root to the branch or in other words, the joining of the branch to the root. The meaning of carrying a known fact upon a known fact means that one of them shares the same rule with the other, so the rule of the root is established for the branch, and the branch shares the same rule as the root. This rule of the root could be a confirmation; Al-Bukhari reported from Ibn Abbas

«أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ جَاءَتْ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: إِنَّ أُمِّي نَذَرَتْ أَنْ تَحُجَّ فَلَمْ تَحُجَّ حَتَّى مَاتَتْ، أَفَأَحُجُّ عَنْهَا؟ قَالَ: نَعَمْ، حُجِّي عَنْهَا، أَرَأَيْتِ لَوْ كَانَ عَلَى أُمِّكَ دَيْنٌ أَكُنْتَ قَاصِيَةً، أَفَضُّوا اللَّهَ فَاللَّهُ أَحَقُّ بِالْوَفَاءِ»

“A woman from the tribe of Juhaina came to the Prophet ﷺ and said, "My mother had vowed to perform Hajj but she died before performing it. May I perform Hajj on my mother's behalf?" The Prophet ﷺ replied, "Perform Hajj on her behalf. Had there been a debt on your mother, would you have paid it or not? So, pay Allah's debt as He has more right to be paid.” Here the Messenger of Allah ﷺ compared the debt to Allah to the debt of the human and stated that its settlement would suffice. In this instance, the rule is a confirmation that the settlement of the debt would suffice.

The rule of the root that is compared with could also be a disaffirmation as is the case in what is reported on the authority of Umar (ra) who asked the Prophet ﷺ about the kiss of the one who is fasting and whether it breaks the fast. The Prophet ﷺ then asked,

«أَرَأَيْتَ لَوْ تَمَضَّمْتُ، أَكَانَ ذَلِكَ يُفْسِدُ الصَّوْمَ؟ فَقَالَ: لَا»

“What do you think if you rinsed your mouth (while you were fasting), would that break your fast?” He replied “No” authenticated by Al-Hakim and confirmed by Al-Dhahabi. Here the Messenger of Allah ﷺ compared the kiss of a fasting person to the rinsing out of one’s mouth in that it does not invalidate the fast. Hence, the rule in this context is a disaffirmation, in this case the non-invalidating of the fast.

The meaning of this analogy being based upon a common factor between the two matters is that the *‘Illah* (*Shari’ah* reason) of the root is also found in the branch. It is on the basis of this *‘Illah* that the carrying over takes place and this *‘Illah* is the common factor between the compared and the compared with or in other words, between the root and the branch. An example of this is reflected when the Messenger of Allah ﷺ was asked about the purchase of dates by ripened dates. *He said:*

«أَيَنْقُصُ الرُّطْبُ إِذَا يَسَسَ؟ فَقَالُوا: نَعَمْ، فَقَالَ: فَلَا، إِذَنْ»

“Do the dates (Rutab) diminish in size when they become dry?’ They said: (yes) they did. He said: in this case, no (He forbade that).” (reported by Abu Ya’la with these words from Sa’d Bin Abi Waqqas and authenticated by Al-Hakim and Ibn Hibban). Here, the Messenger of Allah ﷺ asked about the *‘Illah* that exists in the usurious money, which is the increase, and whether it was also found in the sale of *Rutab* for dates, and when he ﷺ knew of its presence, he confirmed the rule of *Riba* (usury) for such as type of sale, and so he (said)

«فَلَا، إِذَنْ»

“in this case, no”. In other words, it is forbidden to exchange such commodity as it is because it decreases in weight once it is dried; thus, the Messenger of Allah ﷺ asked about the mutual factor which is the *Shari’ah ‘Illah* of *Riba*.

This is the definition of *Qiyas* according to the *Shari'ah*. This definition has been obtained from the narrations of the Messenger of Allah ﷺ. Ibn Abbas narrated:

«جَاءَتْ امْرَأَةً إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ، إِنَّ أُمِّي مَاتَتْ وَعَلَيْهَا صَوْمٌ نَذْرٍ، أَفَأَصُومُ عَنْهَا؟ قَالَ: أَرَأَيْتِ لَوْ كَانَ عَلَى أُمِّكَ دَيْنٌ فَقَضَيْتَهُ أَكَانَ يُؤَدِّي ذَلِكَ عَنْهَا؟ قَالَتْ: نَعَمْ، قَالَ: فَصُومِي عَنْ أُمِّكَ»

“A woman came to the Messenger of Allah ﷺ and said: Messenger of Allah, my mother has died and there is due from her a fast of vow; should I fast on her behalf? Thereupon he said: You see that if your mother had died in debt, would it not have been paid on her behalf? She said: Yes. He ﷺ said: Then observe fast on behalf of your mother.” (reported by Muslim). It is narrated by ‘Abd Allah Bin Al-Zubair that a man asked the Messenger of Allah ﷺ:

«جَاءَ رَجُلٌ مِنْ خَتَنِمِ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنَّ أَبِي أَدْرَكَهُ الْإِسْلَامُ وَهُوَ شَيْخٌ كَبِيرٌ لَا يَسْتَطِيعُ زَكُوبَ الرَّحْلِ وَالْحَجُّ مَكْتُوبٌ عَلَيْهِ أَفَأَحُجُّ عَنْهُ قَالَ أَنْتَ أَكْبَرُ وَلَدِهِ قَالَ نَعَمْ قَالَ أَرَأَيْتَ لَوْ كَانَ عَلَى أَبِيكَ دَيْنٌ فَقَضَيْتَهُ عَنْهُ أَكَانَ ذَلِكَ يُجْزِي عَنْهُ قَالَ نَعَمْ قَالَ فَاحُجَّ عَنْهُ»

“O Messenger of Allah, my father was an old man when he became Muslim, and could not ride an animal, do I perform Hajj on his behalf?” He ﷺ said: “You see if your father had died in debt, would it not have been paid on his behalf?” He said: “Yes.” So he ﷺ said: “Then do perform Hajj on behalf of your father” (reported by Ahmad with a chain authenticated by Al-Zain, and reported similarly by Al-Darimi).

In these two narrations, the Messenger of Allah ﷺ linked the debt to Allah (swt) in fasting and in Hajj onto the debt to the human and they are both the linkage of a known matter upon another known matter, i.e. the association of the debt to Allah with the debt to the human in confirming that their settlement on

one's behalf would suffice. This is so because both of these matters are debts; thus the mutual factor between them is the debt and this is the '*Illah*' and the rule that has been confirmed for both of them is the sufficing of the settlement. This is the reality of *Qiyas* according to the *Shari'ah* from the *Shari'ah* text. Therefore, this definition is a *Shari'ah* rule that must be implemented and it is the binding rule of Allah upon the one who deduces it and upon the one who imitates it either as a *Muttabi*' (a *Muqallid* who queries the evidence) or as an '*Ammi*' (a *Muqallid* who did not query the evidence). It is like any other *Shari'ah* rule, deduced from a *Shari'ah* evidence, because the *Shari'ah* definitions and principles deduced from the *Shari'ah* evidences are *Shari'ah* rules like all other *Shari'ah* rules.

This *Qiyas* is based upon the '*Illah*' or in other words, upon the common factor between the known linked matter and the known matter it is linked to; that is, between the root and the branch. Hence, if the '*Illah*' is found, that is if the mutual factor is found between the compared and the compared with, then *Qiyas* can be done; otherwise, *Qiyas* does not take place at all. This '*Illah*' would be considered a *Shari'ah* evidence if it were mentioned in a *Shari'ah* text or if it were analogous with what is listed by a *Shari'ah* text because the '*Illah*' upon which the *Qiyas* is based has been mentioned by *Shari'ah*.

By contrast, if this '*Illah*' were not mentioned in a *Shari'ah* text and it were not analogous with that which is listed in a *Shari'ah* text, such a *Qiyas* would not be considered a valid *Qiyas*, nor a *Shari'ah* evidence. This is because the reason upon which it is based has not been mentioned by a *Shari'ah* text; thus such *Qiyas* could not be from *Shari'ah* and consequently it cannot be a *Shari'ah* evidence.

Evidence about this *Qiyas* being a *Shari'ah* evidence is reflected in the fact that the *Shari'ah* text in which the '*Illah*' is mentioned or analogous with what is mentioned in the *Shari'ah* text could either come from the Book, the *Sunnah* or from the *Ijma'* of the Companions. These three evidences have been

confirmed as being *Shari'ah* evidences through conclusive proof; thus, the evidence of the *Shari'ah 'illah* is conclusive and that is the evidence of *Qiyas*. This is so because the *Shari'ah* reason found in the rule that is mentioned by the text, which acts as the root, is what makes the rule in the branch a *Shari'ah* rule and it is what makes *Qiyas* feasible for without it *Qiyas* would not have existed in the first place. Therefore, its evidence will also serve as evidence for *Qiyas*.

This *Shari'ah Qiyas* has been demonstrated to us by the Messenger of Allah ﷺ and he ﷺ considered it a *Shari'ah* evidence. The Companions also proceeded according to it and adopted it as a *Shari'ah* evidence when they deduced the *Shari'ah* rules. It has been reported that the Messenger of Allah ﷺ said to Mu'ath and Abu Moussa Al-Ash'ari when he was about to dispatch them to Yemen:

«بِمَ تَقْضِيَانِ؟ فَقَالَا: إِنْ لَمْ نَجِدِ الْحُكْمَ فِي الْكِتَابِ وَلَا السُّنَّةِ قِسْنَا الْأَمْرَ بِالْأَمْرِ، فَمَا كَانَ أَقْرَبَ إِلَى الْحَقِّ عَمِلْنَا بِهِ»

“What will you judge by?” They said: “If we don’t find the rule in the Book or in the Sunnah, we will make analogy (Qiyas) between things; whichever (according to our judgement) is closer to the right is adopted.” (mentioned by Al-Amidi in *Al-Ahkam* and Abu Al-Husain in *Al-Mu'tamad*) Here Mu'ath and Abu Moussa explicitly stated that they would use *Qiyas* and the Messenger of Allah ﷺ approved this; therefore, this serves as proof that *Qiyas* is a *Shari'ah* evidence.

It is reported on the authority of Ibn Abbas that:

«أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ جَاءَتْ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: إِنَّ أُمِّي نَذَرَتْ أَنْ تَحْجَّ فَلَمْ تَحْجَّ حَتَّى مَاتَتْ، أَفَأَحْجُّ عَنْهَا؟ قَالَ: نَعَمْ، حُجِّي عَنْهَا، أَرَأَيْتِ لَوْ كَانَ عَلَى أُمِّكَ دَيْنٌ أَكُنْتَ قَاصِيَةً، أَفَضُّوا اللَّهَ فَاللَّهُ أَحَقُّ بِالْوَفَاءِ»

“A woman from the tribe of Juhaina came to the Prophet and said, "My mother had vowed to perform Hajj but she died before performing it. May I perform Hajj on my mother's behalf?" The Prophet replied, "Perform Hajj on her behalf. Had there been a debt on your mother, would you have paid it or not? So, pay Allah's debt as He has more right to be paid.” (reported by Al-Bukhari). Here the Messenger of Allah ﷺ wanted to teach this woman so he joined the debt to Allah to the debt of the human in the obligation of settling the debt and its sufficing, and this is exactly *Qiyas* itself. It is reported on the authority of Umar Bin Al-Khattab (ra) who asked the Prophet ﷺ about the kiss of the one who is fasting and whether it breaks the fast. The Prophet ﷺ then asked,

«أَرَأَيْتَ لَوْ تَمَضَّمْتُ، أَكَانَ ذَلِكَ يُفْسِدُ الصَّوْمَ؟ فَقَالَ: لَا»

“What do you think if you rinsed your mouth (while you were fasting), would that break your fast?” He replied “No” (authenticated by Al-Hakim and confirmed by Al-Dhahabi). Here the Messenger of Allah ﷺ rejected the rule of invalidating the fast for the act of kissing while fasting by comparing it with the act of rinsing out the mouth while fasting, which does not invalidate the fast, because neither of them enters the belly. Thus it was an explanation of the rule through the use of *Qiyas*.

In these three texts, the rule was not only given an *Illah*, as in the case in many texts that denote *Qiyas*, rather, *Qiyas* itself was also approved, taught and explained through them and this serves as a valid argument stipulating that *Qiyas* is a *Shari'ah* evidence.

This is as far as the Messenger of Allah ﷺ is concerned. As for the Companions, it is reported that they used *Qiyas* as *Shari'ah* evidence in several matters. One example is what has been narrated by Said Bin Mansur in his Sunan from Al-Qasim Bin Muhammad

"أن رجلا مات وترك جدتيه أم أمه وأم أبيه فأتوا أبا بكر فأعطى أم أمه السدس وترك أم أبيه فقال له رجل من الأنصار: لقد ورثت امرأة لو كانت هي الميتة ما ورث منها شيئا وتركتم امرأة لو كانت هي الميتة ورث مالها كله فأشرك بينهما في السدس."

"A man died and left behind his two grandmothers, his mother's mother and his father's mother, and so Abu Bakr came and gave the mother of his mother a sixth and left the mother of his father, and so a man from the Ansar said to him: "You gave the inheritance of a dead man to a woman who if she had died, the same man would not have inherited her; and you excluded the woman whom the man would have inherited all her legacy had she been the one who died", and so he divided the sixth between them" . This event was also mentioned by Al-Ghazali in *Al-Mustasfa* and Al-Amidi in *Al-Ihkam*. Here, the Companions compared the inheritance of the living from the dead with the inheritance of the dead to the living by assuming that the dead was living and the living was dead; thus, concluding that the mutual factor - the kinship between the two persons - is the same in both instances. When Abu Bakr heard this *Qiyas*, he submitted to it, implemented it and retracted from his own opinion.

Similar to this is what was reported that Umar (ra) wrote to Abu Musa Al-Ash'ari saying:

"اعرف الأشباه والأمثال، ثم قس الأمور برأيك"

"Realize the likeness, similarity, and comparison in things and make analogy between the matters according to your judgement" (This was mentioned by Al-Shirazi in *Tabaqat Al-Fuqaha* and was narrated by Al-Bayhaqi in *Al-Ma'rifa Min Kitab Adab Al-Qadi*). Umar (ra) was the *Amir* of the believers while Abu Musa was a judge in this instance. Similarly, it was said to Umar (ra) that Samra had taken wine from Jewish traders as tithe which he then turned into vinegar and sold so Umar (ra) said:

"قَاتَلَ اللَّهُ سَمُرَةَ! أَمَا عَلِمَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: لَعَنَ اللَّهُ الْيَهُودَ، حُرِّمَتْ عَلَيْهِمُ الشُّحُومُ فَجَمَلُوهَا وَبَاعُوهَا وَأَكَلُوا ثَمَنَهَا"

“May Allah destroy Samura; does he not know that Allah's Messenger ﷺ said: Let there be the curse of Allah upon the Jews that fat was declared forbidden for them, but they melted it and then sold it and ate its money.” (reported by Muslim). Here, Umar (ra) compared wine with fat and concluded that its prohibition stipulates the prohibition of its sale. Another example is when Umar (ra) was not sure about the penalty of the seven who took part in the killing of one man so ‘Ali (ra) said to him:

"يا أمير المؤمنين، أرايت لو أن نفراً اشتبكوا في سرقة، أكنت تقطعهم؟ قال: نعم.
قال: فكذلك"

“O Amir of the believers! What if a group of people were to take part in a theft, would you cut their hands?” He said: “Yes.” So ‘Ali said to him: “So likewise” (mentioned by ‘Abd Al-Razzaq in *Al-Musannaf*). This is a *Qiyas* between the killing and the theft, and all this indicates that *Qiyas* is *Shari’ah* evidence deduced from the *Sunnah* and the *Ijma’* of the Companions. Hence, what has been confirmed through the Messenger of Allah ﷺ is the *Sunnah* and what has been confirmed through the Companions is considered an *“Ijma’ Sukuti”* (*Silent Consensus*) because the Companions who utilised *Qiyas* did so in the presence and the full knowledge of the rest of the Companions, and none of them condemned it; therefore, it was a general consensus.

However, the *Sunnah* and the *Ijma’* of the Companions have both been reported by way of individual report (*Ahad* narrations), thus they are considered as indefinite evidence. Therefore, the conclusive evidence about the fact that *Qiyas* is a *Shari’ah* evidence is reflected in what we mentioned with regard to the *Illah* being mentioned in the *Shari’ah* text, that is, in the

Book and the *Sunnah* or in the *Ijma'* of the Companions. These three evidences have been confirmed as being *Shari'ah* evidences by way of conclusive evidence. Therefore, they act as the evidence for *Qiyas* because they are the evidence for the *Illah*.

It has been conclusively established that these four evidences, the Book, the *Sunnah*, the *Ijma'* of the Companions and *Qiyas* have come by way of Revelation from Allah (swt). Apart from these four, no other evidence has been established through conclusive evidence. The fact that they are not established by conclusive evidence is clear since those who use them as evidence do not claim that the proof that they are *Shari'ah* evidences is a definitive proof. The fact that they are not confirmed as (decisive) *Shari'ah* evidences is clear from the lack of conformity of the evidences which they bring forward – in their consideration as *Shari'ah* proofs – upon the issue that they are trying to establish the evidence upon. In other words, it is clearly apparent that there is a mistaken inference in what they present from the evidences upon what they are claiming, such as: the consensus of the Muslims, *Al-Masalih Al-Mursalah* or *Al-Istihsaan* and similar to them from the *Shari'ah* evidences.

So, those who claim that the consensus of the Muslims is a *Shari'ah* evidence draw their conclusion from the words of the Prophet ﷺ:

«لَا تَجْتَمِعُ أُمَّتِي عَلَى ضَلَالَةٍ»

“My Ummah will not gather upon a misguidance”. Ibn Hajr mentioned the narration as being *Mashhur* with many different paths, though all of them have debate around them, and in any case, this does not contain a proof since the misguidance here means apostasy from the *Deen* and not mistakes and with this meaning it was mentioned in the narration:

«لَنْ تَجْتَمِعَ أُمَّتِي عَلَى ضَلَالَةٍ، فَعَلَيْكُمْ بِالْجَمَاعَةِ، فَإِنَّ يَدَ اللَّهِ عَلَى الْجَمَاعَةِ»

“My Ummah will not gather upon a misguidance (Dalalah), and so stick to the group (Jama’at); the Hand of Allah is with the group” (reported by Al-Tabarani with a chain whose men are all trustworthy through Ibn Umar). This is correct since the Islamic *Ummah* would never unite upon apostasy from Islam. However, they could possibly unite upon a mistake and the simplest evidence for that is that the Islamic *Ummah* united upon leaving behind the work to establish the *Khalifah* for a long period and that was consensus upon a mistake.

With respect to those who say that seeking the benefits and repelling the harms is a *Shari’ah Illah* for the *Shari’ah* rules and apply *Qiyas* accordingly, they infer this by the words of Allah (swt):

﴿وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ﴾

“And We have not sent you, [O Muhammad], except as a mercy to the worlds (all mankind).” (TMQ 21:107). So, they consider the fact that he ﷺ is a mercy as a *Shari’ah Illah*, and there cannot be mercy except through the attainment of the benefits and the repulsion of harm, and therefore, it is a *Shari’ah Illah* for the legislation. This inference is incorrect from two angles; the first is that the subject was his ﷺ being sent, or in other words, the fact he ﷺ was a Messenger, and not the *Shari’ah* laws. If we submit that the intention of sending him ﷺ was his message i.e. the *Shari’ah*, the subject would be the whole of *Shari’ah* from the matters of *Aqeedah* and rules collectively and not the *Shari’ah* rules alone. The second issue is that the fact that sending him ﷺ as a mercy for the universe is only a clarification for the *Hikma* (wisdom) behind sending the Prophet ﷺ; in other words, what would occur as a consequence of sending him. In the same manner, the words of Allah (swt):

﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنسَ إِلَّا لِيَعْبُدُونِ﴾

“**And I did not create the jinn and mankind except to worship Me.**” (TMQ 51:56), in other words, the result of creating them would be the worship so it is the *Hikma* of their creation and not the *Illah* for their creation. Likewise His (swt) words:

﴿لِيَشْهَدُوا مَنَفِعَ لَهُمْ﴾

“**That they may witness benefits for themselves.**” (TMQ 22:28). The verse describes the *Hikma* from the Hajj, that is, the result that may be gained from the Hajj. His Words,

﴿إِنَّ الصَّلَاةَ تَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ﴾

“**Indeed, prayer prohibits immorality and wrongdoing.**” (TMQ 29:45), describe the *Hikma* for the prayer; in other words, the result that may be reached from prayer and so on. So, the verse here is not in the context of specifying an *Illah* because the *Illah* is the thing that due to its presence the rule is found or, in other words, is legislated. In order to understand the underlying *Illah* in the text, it is imperative that it must be an attribute and this attribute must indicate the underlying *Illah*, in that it is the *Sabab* (reason/cause) for the legislation or in other words, that the legislation was for its sake, and in such a circumstance it is an inseparable attribute which is never absent, since the cause always results in the effect and ,therefore, if the *Illah* is found then the effect is found.

The words

﴿رَحْمَةً لِّلْعَالَمِينَ﴾

“**Mercy to the worlds (all mankind)**” (TMQ 21:107) and the rest of the previous verses, even if they are considered as attributes and within the verses are the letters that would indicate an underlying *Illah*, the context of the words does not indicate the existence of an *Illah* because they could be absent and because the legislation was not for its sake. Accordingly, the Islamic *Shari'ah*

could be a mercy for the one who believes in it and who acts according to it, such as: the first generations of Muslims, and it could be an affliction for whoever disbelieves in it, such as the disbelievers. So, the sending of the Messenger ﷺ is an affliction upon the disbelievers and they are from the *'Aalameen*. Additionally, the Islamic message is present today. This is since the sending has practically taken place and with that the Muslims who themselves believe in that message are today in hardship. So, it is not the sending alone, that is the existence of the *Shari'ah* alone, that is a mercy, and for that reason it is not an *Illah* for it. Based upon that, attaining the benefits and repelling the harms is not a *Shari'ah Illah*; so, it is not taken as a basis for *Qiyas*.

As for those who say that rationality is from the Islamic evidences, we say that the discussion is about the *Shari'ah* rule or what is considered, with the most probability, as the rule of Allah. This is not present except in what came by Revelation, and the Revelation did not mention the rationality, and for that reason, there is no evidence whether conclusive or inconclusive to be found that states that rationality is from the *Shari'ah* evidences for the *Shari'ah* rules; so it is not considered to be from the *Shari'ah* evidences at all.

With respect to those who say that the opinion of the companion is from the *Shari'ah* evidences, they deduce this by saying that the two evidences for the *Ijma'* of the Companions are evidences for the single companion as well, since the praise for them (collectively) is also praise for one of them. In the same manner, since there cannot be shortcomings in their conveyance (of the *Deen*) collectively, there can be no doubt with respect to the conveyance of one person from amongst them. Additionally, the words of the Messenger of Allah ﷺ,

«أَصْحَابِي كَالنُّجُومِ، بِأَيُّهُمْ اقْتَدَيْتُمْ اهْتَدَيْتُمْ»

“My companions are like stars, whoever you follow you follow guidance”, support the opinion of a companion being an evidence. This deduction is incorrect since the praise of the

Prophet ﷺ for the companions collectively not individually is a proof that the *Ijma'* of the Companions is a *Shari'ah* evidence and the fact that the Companions did not convey the Quran individually is a proof that their consensus is a *Shari'ah* evidence. Rather, the *Shari'ah* evidence is the praise upon them and the fact that they collectively agree that a rule is the *Shari'ah* rule. So the evidence is two matters, praise and consensus and these are not found in the individual companion. In which case, the issue of praise and the conveyance of the Quran are not suitable to be proofs that the words of whoever conveyed the Quran from those whom Allah (swt) praised are *Shari'ah* evidences because in the same manner that Allah (swt) praised the Companions, He (swt) also praised those who followed them, and since the conveyance of the Quran even if by those whom Allah (swt) has praised does not make the words of the one who conveyed it a *Shari'ah* evidence, and due to that the inference made is invalid. What indicates the invalidity of this inference is that what an individual companion conveyed and what he narrated from the narrations is not considered to be definite – rather it is indefinite. Therefore, “*When the old man and the woman commit fornication then have them stoned.*” is not considered to be a verse from the Quran even though it was conveyed by a companion since there was no *Ijma'* upon it. In the same manner, the narrations that are transmitted by the Companions from the singular reports are not considered definite - rather they are indefinite.

This is different from the *Ijma'* of the Companions since what they agreed upon unanimously as being from the Quran is considered to be Quran and to be definite, and what they agreed upon unanimously in terms of narrations and were transmitted from them by *Mutawatir* (successive multiple chains) are considered to be definite evidences. Accordingly, the difference is vast between what the Companions agreed upon unanimously - where there is no disagreement, meaning it is definite and the one who denies it is a disbeliever - and what the single companion narrated which is indefinite and the one who denies it is not

considered to be a disbeliever. Therefore, *Ijma'* of the Companions is *Shari'ah* evidence whereas the opinion of the individual companion is not considered to be from the *Shari'ah* evidences. In addition to that, contrary to the *Ijma'* of the Companions who do not agree upon a mistake, the individual companion can make mistakes and he is not free from them. The Companions used to differ over issues and each of them adopted a different opinion from the other; so, if the opinion of the companion were a proof then the proofs of Allah (swt) would be in disagreement and contradictory. Therefore, the opinion of a companion is not considered to be *Shari'ah* evidence.

As for those who say “the *Shari'ah* of those before us is *Shari'ah* for us”, they use the following words of Allah (swt) as evidence:

﴿إِنَّا أَوْحَيْنَا إِلَيْكَ كَمَا أَوْحَيْنَا إِلَى نُوحٍ﴾

“Indeed, We have revealed to you, [O Muhammad], as We revealed to Noah.” (TMQ 4:163),

﴿شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا﴾

“He has ordained for you of religion what He enjoined upon Noah.” (TMQ 42:13) and His (swt) words

﴿ثُمَّ أَوْحَيْنَا إِلَيْكَ أَنْ اتَّبِعْ مِلَّةَ إِبْرَاهِيمَ﴾

“Then We revealed to you, [O Muhammad], to follow the religion of Abraham (Millat of Ibrahim) .” (TMQ 16:123).

These verses indicate that we are addressed by the legislation of the previous Prophets. In addition, the very duty of the Messenger ﷺ is that he came to inform about what Allah (swt) has obliged us to adhere to. Due to that, every letter in the Quran and every action that emanated from the Prophet ﷺ, any word that he

pronounced or any confirmation from him must be adhered to except what was mentioned as being specific to him or other than him. So we are ordered by everything that is mentioned by the Quran or by narration except when a *Shari'ah* text comes to explain that it is specific to the Companions of the previous *Shara'ih* (plural of *Shari'ah*), and we are ordered by whatever has not mentioned in such a manner since Allah did not mention it in the Quran without reason and, therefore, we must be addressed by it.

This inference is incorrect. With respect to the verses, the intention of the first verse is that revelation is sent to him ﷺ in the same way it was sent to other Prophets, and the purpose of the second verse is that the basis of *Tawheed* (belief in Oneness of Allah(swt)) was legislated and that was what Nuh was ordained with. The intended meaning of the third verse is to follow the root of *Tawheed* since the word “*Millat*” means: the root of *Tawheed*. All the verses from this type are in this manner, such as His (swt) words:

﴿فِيهِدْنَهُمْ أَقْتَدَ﴾

“So from their guidance take an example.” (TMQ 6:90) and other verses. As for His (swt) words

﴿إِنَّا أَنْزَلْنَا التَّوْرَةَ فِيهَا هُدًى وَنُورٌ سَحَّكُمُ بِهَا النَّبِيُّونَ﴾

“Indeed, We sent down the Torah, in which was guidance and light. The Prophets who submitted [to Allah] judged by it.” (TMQ 5:44), Allah (swt) by this meant the Prophets of the Tribe of Israel and not Muhammad ﷺ, and the Muslims only have one Prophet. As for what is narrated from Abu Hurayrah that the Messenger of Allah ﷺ said:

«الْأَنْبِيَاءُ إِخْوَةٌ مِنْ عِلَاقَاتٍ، وَأُمَّهَاتُهُمْ شَتَّى، وَدِينُهُمْ وَاحِدٌ»

“Prophets are brothers in faith, having different mothers. Their religion (Deen) is, however, one .” (reported by Muslim), the meaning of “their *Deen* is one” is the *Tawheed* which is the basis that none differed upon. It does not mean what was sent from the *Deen* is one with all of them since we understand the opposite from His (swt) words:

﴿لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَا جَاءَ﴾

“To each among you have we prescribed a law and an open way.” (TMQ 5:48). From this, it becomes clear that these evidences are not suitable to be inferred from, and the inference from them to prove that the *Shari’ah* from before us is a *Shari’ah* for us is incorrect.

On the other hand, there are evidences that decisively forbid the following of the *Shari’ah* of those before us whether it came in the Quran, the *Sunnah* or not in both. Allah (swt) said:

﴿وَمَنْ يَبْتَغِ غَيْرَ الْإِسْلَامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ﴾

“And whoever desires other than Islam as religion - never will it be accepted from him.” (TMQ 3:85) and Allah (swt) said:

﴿إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامُ﴾

“Indeed, the religion in the sight of Allah is.” (TMQ 3:19). So, when there is a *Shari’ah* text stating that for anyone to embrace any *Deen* other than the *Deen* of Islam is conclusively not accepted, then how can it be requested from the Muslims to follow it? Allah (swt) says:

﴿وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ﴾

“And We have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it (guardian over it).” (TMQ 5:48), the supremacy of the Quran over the previous Books does not mean that it was a confirmation for them since it is said in the same verse

﴿مُصَدِّقًا﴾

“Confirming” and so it rather means that it is an abrogation of them. Also, there is an *Ijma’* that the *Shari’ah* of Islam is an abrogation for all the previous *Shara’ih*. More than that, Allah (swt) says:

﴿أَمْ كُنْتُمْ شُهَدَاءَ إِذْ حَضَرَ يَعْقُوبَ الْمَوْتُ إِذْ قَالَ لِبَنِيهِ مَا تَعْبُدُونَ مِن بَعْدِي قَالُوا نَعْبُدُ إِلَهَكَ وَاللَّهُ أَبَايَكَ إِبْرَاهِيمَ وَإِسْمَاعِيلَ وَإِسْحَاقَ إِلَهُهَا وَاحِدًا وَنَحْنُ لَهُ مُسْلِمُونَ﴾ تِلْكَ أُمَّةٌ قَدْ خَلَتْ لَهَا مَا كَسَبَتْ وَلَكُمْ مَا كَسَبْتُمْ وَلَا تُسْأَلُونَ عَمَّا كَانُوا يَعْمَلُونَ﴾

“Or were you witnesses when death approached Jacob, when he said to his sons, "What will you worship after me?" They said, "We will worship your God and the God of your fathers, Abraham and Ishmael and Isaac - one God. And we are Muslims [in submission] to Him."; That was a nation which has passed on. It will have [the consequence of] what it earned, and you will have what you have earned. And you will not be asked about what they used to do.” (TMQ 2:133-4). So, Allah (swt) informs us that He will not ask us about what those Prophets did, and if we are not accounted about their actions, then we will not be accounted about their *Shari’ah* since conveying it and working according to it is from their actions. What we are not accountable for, we are not commanded with it and it is

unnecessary for us. Additionally, it is narrated from Jaber that the Prophet ﷺ said:

«أُعْطِيتُ خَمْسًا لَمْ يُعْطَهُنَّ أَحَدٌ قَبْلِي: كَانَ كُلُّ نَبِيٍّ يُبْعَثُ إِلَى قَوْمِهِ خَاصَّةً وَبُعِثْتُ إِلَى كُلِّ أَحْمَرَ وَأَسْوَدَ»

“I have been conferred upon five (things) which were not granted to anyone before me (and these are): Every Prophet was sent particularly to his own people, whereas I have been sent to all the red and the black (all mankind).” (Reported by Muslim) and from Abu Hurayrah that the Prophet ﷺ said

«فُضِّلْتُ عَلَى الْأَنْبِيَاءِ بِسِتٍّ»

“I have been honored over the Prophets with six (things)” (reported by Muslim), and then he ﷺ mentioned them and amongst them was

«وَأُرْسِلْتُ إِلَى الْخَلْقِ كَافَّةً»

“And I have been sent to all mankind”. Hence, the Prophet ﷺ has narrated that every Prophet before our Prophet ﷺ was only sent specifically to their people; so, he was not sent to other than his people and they were not obliged by the *Shari’ah* of a Prophet other than their own. Therefore, it is confirmed that no one from the Prophets were sent to us and so their *Shari’ah* cannot be a *Shari’ah* for us. This is supported by what is mentioned clearly in verses from the Quran

﴿وَالِىٰ ثَمُوْدَ اٰخَاهُمْ صَالِحًاۙ﴾

“And to Thamud [We sent] their brother Salih.”,

﴿وَالِىٰ عَادَ اٰخَاهُمْ هُوْدًاۙ﴾

“And to 'Aad [We sent] their brother”,

﴿وَالِى مَدْيَنَ أَخَاهُمْ شُعَيْبًا﴾

“And to Madyan [We sent] their brother .” (TMQ 11:50, 61, 84).

From all this, it is clear that the *Shara'ih* of those who came before us is not *Shari'ah* for us for three reasons: the first of them being that the proofs used as evidence only indicate the basis of *Tawhid* and do not indicate that all of the *Shara'ih* of the Prophets is one. Secondly, the *Shari'ah* texts which mention the prohibition of following any *Shari'ah* other than the *Shari'ah* of Islam, and thirdly every Prophet was sent to his people specifically and we are not from his people so he is not a Messenger for us. We are, therefore, not addressed by his *Shari'ah* and are not bound by it. In that case, the *Shari'ah* of those before us is not considered from the *Shari'ah* evidences.

This is with regards to their use of the verses as proof. However, with respect to their inference that the Messenger ﷺ came to convey from Allah everything that must be adhered to, this is correct as to what he informed us that we must adhere to from Allah which is the *Shari'ah* that he came with. However, it is not correct (their inference) with respect to what he ﷺ did not order us to adhere to. So, the Prophet conveyed to us from Allah (swt) about the circumstances of those before us from the previous nations, but he informed us of that for the sake of example and admonition and not for us to be bound by their *Shari'ah*. So, the stories of the Prophets, as well as their affairs and the affairs of their nations, were narrated to us and their circumstances and what rules they used to follow were made clear to us. In addition, all of that was only for the sake of example and admonition and nothing else and it was not in order to be bound by their *Shari'ah*.

With respect to the stories and to the news (*Akhbaar*), it is apparent that they came for admonition and lessons and this does not need any proof, and as for the conditions of the nations and

what they used to follow in terms of rules, this was mentioned in way of reports about them and they were not mentioned from the perspective of being bound by them. They are like stories that came to explain the circumstances of the previous Prophets and the previous nations.

Above and beyond this, several of these rules contradict the Islamic *Shari'ah* in their details; therefore, if we were addressed by them, we would have been addressed by two different *Shara'ih* and this is not possible. As an illustration from the legislation of Sulayman, Allah (swt) said:

﴿وَتَفَقَّدَ الطَّيْرَ فَقَالَ مَا لِيَ لَا أَرَى الْهَدْهَدَ أَمْ كَانَ مِنَ الْغَائِبِينَ
لَأُعَذِّبَنَّهُ عَذَابًا شَدِيدًا أَوْ لَأَذْهَبَنَّهُ أَوْ لَيَأْتِيَنِي بِسُلْطَنٍ مُبِينٍ﴾

“And he took attendance of the birds and said, "Why do I not see the hoopoe - or is he among the absent?; I will surely punish him with a severe punishment or slaughter him unless he brings me clear authorization."” (TMQ 27:20-1) and there is no difference amongst the Muslims regarding the prohibition of the punishment of the bird and even if it was disobedient; rather, there is no difference even regarding the invalidity of punishing any animal and there are *Shari'ah* texts that came regarding this. The Prophet (saw) said:

«الْعَجَمَاءُ جَرَحُهَا جُبَارٌ»

“*The injuries caused by the beast are without liability*” (agreed upon through Abu Hurayrah); it is mentioned in *Al-Muheet* dictionary: “*The Jubaar is like the cloud which destroyed the cowardly, and Jubaar is loss and invalid*”. Therefore, the damage caused by livestock, as well as the bird, is not indemnified (i.e. the owner is not liable).

With respect to the *Shari'ah* of Musa, Allah (swt) says:

﴿حَرَّمْنَا كُلَّ ذِي ظُفْرٍ وَمِنَ الْبَقَرِ وَالْغَنَمِ حَرَّمْنَا عَلَيْهِمْ شُحُومَهُمَا
إِلَّا مَا حَمَلَتْ ظُهُورُهُمَا أَوِ الْحَوَايَا أَوْ مَا اخْتَلَطَ بِعَظْمٍ﴾

“And to those who are Jews We prohibited every animal of uncloven hoof; and of the cattle and the sheep We prohibited to them their fat, except what adheres to their backs or the entrails or what is joined with bone.” (TMQ 6:146), and in the *Shari'ah* of Islam all of that has been made permitted for the Muslims by His (swt) word:

﴿وَطَعَامُكُمْ حِلٌّ هُمْ﴾

“And your food is lawful for them.” (TMQ 5:5), and this fat is from our food so it is permitted for them. The words of Umm Maryam in the Quran,

﴿إِنِّي نَذَرْتُ لَكَ مَا فِي بَطْنِي مُحَرَّرًا﴾

“[Mention, O Muhammad], when the wife of 'Imran said, "My Lord, indeed I have pledged to You what is in my womb, consecrated [for Your service].” (TMQ 3:35), are part of the *Shari'ah* of the people at the time of Zakariyyah and this is not permitted in Islam in origin. The words,

﴿كُلُّ الطَّعَامِ كَانَ حِلًّا لِّبَنِي إِسْرَءِيلَ إِلَّا مَا حَرَّمَ إِسْرَءِيلُ عَلَى
نَفْسِهِ﴾

“All food was lawful to the Children of Israel except what Israel had made unlawful to himself.” (TMQ 3:93), are part of the *Shari'ah* of Ya'qub and in Islam it is not permitted to prohibit oneself from what Allah (swt) allowed; He (swt) says:

﴿لَمْ تُحَرِّمْ مَا أَحَلَّ اللَّهُ لَكَ﴾

“O Prophet, why do you prohibit [yourself from] what Allah has made lawful for you.” (TMQ 66:1). The *Shari’ah* of the People of the Book at the time of the companions of the Cave includes,

﴿قَالَ الَّذِينَ عَلَبُوا عَلَىٰ أَمْرِهِمْ لَنَتَّخِذَنَّ عَلَيْهِم مَّسْجِدًا ۖ﴾

“The ones who won said “we shall build a place of worship over them”. ” (TMQ 18:21), and this is prohibited in Islam; the Prophet ﷺ said

«إِنَّ أَوْلَئِكَ إِذَا كَانَ فِيهِمُ الرَّجُلُ الصَّالِحُ فَمَاتَ بَنَوْا عَلَىٰ قَبْرِهِ مَسْجِدًا وَصَوَّرُوا فِيهِ تِلْكَ الصُّوْرَ، فَأُولَئِكَ شِرَارُ الْخَلْقِ عِنْدَ اللَّهِ يَوْمَ الْقِيَامَةِ»

“When a pious person amongst them (among the religious groups) dies they build a place of worship on his grave, and then decorate it with such pictures. They would be the worst of creatures on the Day of judgment in the sight of Allah.” (agreed upon).

Part of the *Shari’ah* of Musa are the words

﴿وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالْيَدَ بِالْيَدِ وَالْجُرُوحَ قِصَاصٌ ۚ﴾

“And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers.” (TMQ 5:45), while we do not take from this because we are not ordered with it and only other than us were ordered by it. Islam only obligated us with retaliation from all of these and in other issues by His (swt) words:

﴿فَمَنْ أَعْتَدَىٰ عَلَيْكُمْ فَأَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا أَعْتَدَىٰ عَلَيْكُمْ﴾

“So whoever has assaulted you, then assault him in the same way that he has assaulted you.” (TMQ 2: 194), His (swt) saying,

﴿وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ﴾

“And if you punish, O believers, punish with an equivalent of that with which you were harmed.” (TMQ 16:126) and His (swt) words

﴿وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِّثْلُهَا﴾

“And the retribution for an evil act is an evil one like it.” (TMQ 42:40). In addition, His (swt) words

﴿وَالْجُرُوحُ قِصَاصٌ﴾

“And for wounds is legal retribution.” (TMQ 5:45) conflicts with *Qisas* (recompense) in Islam since the *Qisas* in Islam is the fine, and there is nothing in the Torah about accepting the fine. Rather, the fine is only in Islamic law and the fine is the blood money; so, the blood money for what falls short of life is called the fine. Likewise, many rules about *Qisaas* in the stories that have been narrated about the previous Prophets and nations, explaining their circumstance and what they used to follow from laws, contradict the laws of Islam; so how can we be addressed by them?

It cannot be said that these laws have been abrogated by the Islamic *Shari'ah* since they were narrated without restriction and the laws which have come to us did not come as abrogation for laws before us. Rather they came as a *Shari'ah* for us and there is no relationship between these laws. Accordingly, the issue of abrogation is not found and the call regarding it is a claim that

has no backing since abrogation is the nullification of the rule which is understood from a previous *Shari'ah* text by a subsequent one, such as the words of the Messenger ﷺ:

«نَهَيْتُكُمْ عَنْ زِيَارَةِ الْقُبُورِ، فَزُورُوهَا»

“I forbade you to visit graves, but you may now visit them.” (reported by Muslim through Buraydah), and the report of Al-Rabi' in his *Musnad* through Ibn Abbas,

«كُنْتُ نَهَيْتُكُمْ عَنْ زِيَارَةِ الْقُبُورِ، أَلَا فَزُورُوهَا»

“(In the past) I forbade you from visiting graves, but visit them now.”; therefore, the nullification and raising of the previous rule by a subsequent *Shari'ah* text is abrogation. Therefore, for abrogation to take place there must be an abrogated rule that was revealed before the abrogating rule, and for an indication to be present in the abrogating text that it is an abrogation for that rule, and anything other than this is not considered to be abrogation. The mere difference between two rules or contradiction between them does not make one of them an abrogation for the other; rather, there must be an indication in the abrogating text which indicates that it is an abrogation for a specific rule. Accordingly, these rules, narrated from the previous *Shara'ih*, are not abrogated by the rules of Islam which differs with them or contradicts them since there is nothing which indicates that. Furthermore, there is no relationship between them and the rules of Islam in legislation; so, they are abrogated by the abrogation of the previous *Shara'ih* by the *Shari'ah* of Islam and not by laws specific to them that came to abrogate them. With this, it is clear that the inference that we are addressed by what the Messenger ﷺ came with and are restricted by it as being an invalid inference since we are addressed by what came to us with him ﷺ from the legislation of Islam and restricted by that, and we are not addressed by what he related to us from the stories of the previous Prophets and their narrations, and neither are we addressed by what he explained to us from the circumstances of

the previous nations and what laws they used to follow. Accordingly, it has become apparent with clarity that the legislation of those before us is not legislation for us and the invalidity of considering it being from the Islamic evidences is also apparent.

However, if another *Shari'ah* text is found with the laws from the *Shari'ah* of those before us which indicates that we are addressed by them, then, in that case, this rule would become found in the Book or in the *Sunnah*, and alongside it a *Shari'ah* text would be found that indicates that we are addressed by it in our *Shari'ah* and the address of the Legislator (swt) for us existed there which indicates that it is for us and so it would be obligatory to take action upon it then. However, this would not be because it was a *Shari'ah* of those before us but because of the address found in the same rule that is for us; in other words, because Allah (swt) addressed us by it and the Messenger ﷺ informed us that it was from the *Shari'ah* which he had come with, i.e. the laws of Islam.

It becomes apparent to the one who follows the laws that have come in the Book, the *Sunnah* and the previous *Shara'ih* that the text that comes indicating that we are addressed by it, that it is from our *Shari'ah*, could come in three circumstances:

Firstly, when the verse which the rule came with begins by directing the address towards us such as the verse regarding *Kanz* (hoarded wealth), Allah (swt) says:

﴿يَتَأْتِيهِمُ الَّذِينَ ءَامَنُوا إِنَّ كَثِيرًا مِّنَ الْأَحْبَارِ وَالرُّهْبَانِ لَيَأْكُلُونَ أَمْوَالَ
النَّاسِ بِالْبَاطِلِ وَيَصُدُّونَ عَن سَبِيلِ اللَّهِ وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ
وَلَا يُنْفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ ﴿٣٤﴾﴾

“O you who have believed, indeed many of the scholars and the monks devour the wealth of people unjustly

and avert [them] from the way of Allah. And those who hoard gold and silver and spend it not in the way of Allah - give them tidings of a painful punishment.” (TMQ 9:34). Allah (swt) has addressed us with this verse; so, whatever it mentioned is a *Shari’ah* for us. Accordingly, *Kanz* is prohibited in our *Shari’ah* even though part of the verse that prohibited it was explaining the circumstances of the rabbis and monks.

Secondly, when the verse which came with the rule has come with a word which indicates generality, such as the verses which mention ruling by other than what Allah has revealed. Allah (swt) says

﴿وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ﴾

“And whoever does not judge by what Allah has revealed - then it is those who are the disbelievers.” (TMQ 5:44). So, the word “whoever” indicates generality and this means that it encompasses us and thus we are addressed by it. Similarly, Allah (swt) says:

﴿وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ﴾

“And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers.” (TMQ 5:45), and in the same way

﴿وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْفَاسِقُونَ﴾

“And whoever did not judge by what Allah revealed, those are they that are the transgressors.” (TMQ 5:49).

Thirdly, if the verse ends with something that draws our attention to the laws which are within it, such as the verse of *Qisas* where Qarun was mentioned; Allah (swt) says:

﴿إِنَّ قَرُونَ كَانَ مِنْ قَوْمِ مُوسَىٰ فَبَغَىٰ عَلَيْهِمْ ۖ وَآتَيْنَاهُ مِنَ الْكُنُوزِ مَا إِنَّ مَفَاتِحَهُ لَتَنُوءُ بِالْعُصْبَةِ أُولَى الْقُوَّةِ﴾

“Indeed, Qarun was from the people of Moses, but he tyrannized them. And We gave him of treasures whose keys would burden a band of strong men.” until His (swt) words:

﴿وَيَكَانَهُمْ لَا يَفْلَحُ الْكَافِرُونَ﴾

“Oh, how the disbelievers do not succeed!” (TMQ 28:76-82). This verse is followed directly afterwards by His (swt) words:

﴿تِلْكَ الدَّارُ الْآخِرَةُ نَجْعَلُهَا لِلَّذِينَ لَا يُرِيدُونَ عُلُوًّا فِي الْأَرْضِ وَلَا فَسَادًا ۚ وَالْعِزَّةُ لِلْمُتَّقِينَ ۖ﴾

“That home of the Hereafter We assign to those who do not desire exaltedness upon the earth or corruption. And the [best] outcome is for the righteous; Whoever comes [on the Day of Judgement] with a good deed will have better than it.” (TMQ 28:83), and so the verses became an address to the Messenger ﷺ and to the believers. This draws attention to the laws which came (within them) when it is said:

﴿لَا يُرِيدُونَ عُلُوًّا فِي الْأَرْضِ﴾

“Those who do not desire exaltedness upon the earth”
and these were rules regarding Qaroon who wanted grandeur in the land but there is what indicates that we are addressed by these laws.

In these three circumstances, laws of the verses of previous people will be considered as laws from the Islamic *Shari'ah* since there is something that indicates that we are addressed by them and we adopt them in their characteristic as laws from the Islamic *Shari'ah* and not from the characteristic that they were from a *Shari'ah* of those before us since the *Shari'ah* of those who came before us is not a *Shari'ah* for us.

With regards to those who say that *Istihsaan* (application of discretion in a legal decision) is from the *Shari'ah* evidences, they are not able to come with single or even indefinite evidence from the *Shari'ah* that supports their claim. *Istihsaan* can be explained by those who take it as a *Shari'ah* evidence that: it is evidence which occurs to the *Mujtahid* when he or she is unable to make it apparent due to the lack of help to express it. It is also explained that it is to leave an aspect from amongst the aspects of *Ijtihad* without the completeness of the words for another aspect which is stronger than it and which would be like an unexpected factor on the first. In the same manner, it is explained that it is in an issue to abandon the rule comparable to it to another rule due to a stronger aspect that necessitates this move. Additionally, it is explained that it is to cut off an issue from comparable ones.

Istihsaan is divided into two categories; the first is *Istihsaan Qiyasi* and the second is *Istihsaan* of necessity. *Istihsaan Qiyasi* is to abandon the rule of an apparent *Qiyas* that comes to fore for a different rule by another *Qiyas* which is more subtle and hidden, but is a stronger proof, with a more satisfying viewpoint and a more correct derivation. An example of this is: if a person bought a car from two people in one agreement as a loan from them. Then, one of the two creditors was given part of this

debt. However, he didn't have the right to take it specifically; rather, his partner in the debt has a right to claim his part of the receipt since he (the first creditor) has appropriated it from the combined sale price in the single sale. Moreover, the appropriation of either of the two partners from the price of the combined sale between them is the appropriation of both the partners, in other words, it is an appropriation for the partnership and it is not for either of them to take specifically. So, if whatever was taken is destroyed while it is in the possession of the one who received it before the second partner took his share from it, then the deduction from the *Qiyas* is that it would be taken away from the total sum of the two, or in other words, from the total sum of the partnership. However, in *Istihsaan* the loss would be considered to be taken only from the one who had received it and the loss would not be counted against the second partner according to *Istihsaan* since in origin he is not inseparable from the partnership of the one who received it; rather, he is able to leave what is received by the appropriator and become attached to the debtor by himself specifically. The other examples follow in the same manner. This is *Istihsaan Qiyasi*.

As for *Istihsaan* of necessity, it is what contradicts the rule of *Qiyas* by taking into account an incumbent necessity or a required benefit in order to fulfil the need or prevent the hardship. This occurs when the rule from the *Qiyas* leads to a hardship or a problem in some issues and so it is abandoned at that time by *Istihsaan* for another rule which would remove the hardship and repel the problem. This is like the example of the employee since his possession with respect to what he is employed upon is considered to be an *Amanat* (trust); so there is no liability (to be paid) if it is damaged while it is with him as long as he was not negligent. Therefore, if someone employed a person to work in his house to sew clothes for someone else for one month, he is considered a private employee. Then, if the clothes were damaged while they are in the employee's possession without any transgression from him, there is no payment of liability because

he possessed it as a trust. Additionally, if someone employed someone to work in his shop to sew clothes for others and he used to sew clothes for all the people, then he is a general employee. So, if the clothes are destroyed while they are in this employee's possession without any transgression from him then there is no liability since he held them as a trust in the same manner. However, according to *Istihsaan*, there is no liability upon the private employee while there is for the general employee so that he (the general employee) would not accept more work than he is able to do since he might destroy the peoples' wealth.

This is the summary of *Istihsaan* and its evidences. It is apparent that they are not evidences; rather, they are simply rational amendments that are neither from the Book nor from the *Sunnah*. They do not even reach the level of being considered indefinite proofs let alone conclusive proofs that *Istihsaan* is from the *Shari'ah* evidences. This is from one angle and from another angle; whatever comes about from rational amendment is void.

With respect to the explanations of *Istihsaan*, all of them are invalid. As for the first explanation that the evidence is sensed in the mind of the *Mujtahid* and that he or she does not know what it is, it is not permitted to consider something an evidence as long as it remains unknown since the lack of ability to make it clear and apparent proves that it is not clear to the *Mujtahid* and that he or she lacks knowledge of it; so, it is not correct to be from amongst the *Shari'ah* evidences. As for the other explanations, all of their meanings are the same, i.e. to abandon similar issues to the issue at hand for another stronger view, in other words, to abandon *Qiyas* for stronger evidence. If these explanations intend by the "stronger evidence", a text from the Book or the *Sunnah*, then this is not *Istihsaan*; it is rather preference of the text, so it is deducing from the text which would be deduction by the Book or the *Sunnah* and not deduction by *Istihsaan*. If the "stronger evidence" is the mind by what it considers as benefit and this is the intended meaning, then this is invalid since *Qiyas* is built

upon the *Shari'ah 'Illah* which is determined by the text and it is the address of the Legislator (swt) to us. The mind and the benefit are not *Shari'ah* texts and nor are they another '*Illah* stronger than the text; rather, there is no relationship between the mind and benefit with the *Shari'ah* text (i.e. what came as Revelation). For that reason, this abandonment is invalid.

This is regarding the explanations. As for the categorisation of *Istihsaan*, the invalidity of *Istihsaan Qiyasi* has become clear from the invalidity of the second explanation, which was to abandon the similar issues to the issue. Also, their consideration that it is a hidden *Qiyas* is invalid because it has no relationship with *Qiyas*; rather, it is simply reasoning by benefit (making the benefit an '*Illah*'). Regarding the example of the price of a combined sale which was sold in one agreement, it is not correct to differ in the rule, the loss of the wealth which one of the two partners appropriated, that it is a loss from the wealth of the partnership, for what one of the two partners appropriated from the wealth is from the appropriation of the partnership. Because the wealth, irrespective of whether it was the sold car or its price, is the wealth of the partnership and not the wealth of one of the partners; so its loss is the loss of the wealth of the company just like its appropriation is an appropriation of the wealth of the company. So, this beneficial (*Maslahi*) abandonment has no place and it contradicts the *Shari'ah*.

As for the *Istihsaan of necessity*, its invalidity is clear in that it is ruled by the mind and what the mind perceives as benefit; it is not a *Shari'ah* text and the adopted reason ('*Illah*') is preferred to the *Shari'ah* text (that is, the comprehension of *Shari'ah* text). All of this is invalid without any necessary discussion. Then, to make the shared employee liable and the private employee not liable is to prefer something without evidence to make it preferred and it contradicts with the *Shari'ah* text. It was reported by Al-Bayhaqi in *Sunan Al-Kubra* from

‘Amr B. Shu’ayb from his father from his grandfather that the Messenger ﷺ said:

«ثُمَّ لَا ضَمَانَ عَلَى مُؤْتَمِنٍ»

“then there is no liability upon the one who takes a trust”. Similarly, through Al-Qasim Bin Abdul Rahman that ‘Ali and Ibn Mas’ud said: “there is no liability upon the one who takes a trust”, and in his *Sunan* Al-Bayhaqi reports from Jaber that Abu Bakr ruled that a deposit which had been kept in a bag, which was burnt and so was destroyed, was not to receive any liability in exchange; so, there is no liability upon anyone given a trust at all since the expression of the narration “no” is a negation of the genus

"لَا ضَمَانَ"

“no liability/responsibility” which indicates generality, and so it encompasses every one holding a trust whether they were a private employee or a general employee.

By this it is apparent that *Istihsaan* is not from the *Shari’ah* evidences, and it is not correct to consider it from the *Shari’ah* evidences since there is no proof at all, definite or indefinite, whether from the Quran, from the *Sunnah* or from the *Ijma’* of the Companions that indicates that it is from the evidences. This is besides the fact that it is using the mind as evidence which makes it invalid and that some of its examples contradicts *Shari’ah* texts.

As for those who say that *Al-Masalih Al-Mursalah* are from the *Shari’ah* evidences, in the same manner they are also unable to bring any proof for it; however, they consider the reasons behind the whole of the *Shari’ah* to be the obtaining of interests and the repulsion of harms. In the same way, they consider the reason behind each specific *Shari’ah* rule to be the

obtaining of the interest or the repulsion of the harm. However, some of them make it a condition that the consideration that something is itself a benefit needs to be found mentioned in a text from the *Shari'ah* or mentioned that it is a type of interest but some of them do not make this a condition; rather, they consider the *Maslahah* (benefit) a *Shari'ah* evidence even if there is no mentioning of the consideration of it or its type in a *Shari'ah* text. This is because it comes under the general *Masalih* by which the benefits are sought and the harms are avoided.

Al-Masalih Al- Mursalah may be defined as: every interest which has no text narrated in the *Shari'ah* with respect to it or its type. So, the meaning of *Mursalah* is that it is not mentioned in evidence. They said that if the *Maslahah* was itself mentioned in a specific text, such as teaching, reading and writing, or was from a general text which mentioned its type which confirmed its consideration, such as the enjoining of every type of good and the forbiddance of all the acts of evil, then in these two situations it is not considered to be from *Al-Masalih Al-Mursalah*. Rather, *Al-Masalih Al-Mursalah* is forwarded from the evidence, in other words, there is no evidence found upon it; instead, it is derived from the generality of the *Shari'ah* being sent to gain the interests and repel the harms. However, there is a difference made between the *Shari'ah* interests and those which are not legitimate since the *Shari'ah* interests are those that agree with the intentions (*Maqasid*) of the *Shari'ah*, and the interests that are illegitimate are those which contradict the intentions of the *Shari'ah*. So, *Al-Masalih Al-Mursalah* that are considered to be a *Shari'ah* evidence are those which agree with the intentions of the *Shari'ah*, and those which contradict with the intentions of the *Shari'ah* are not considered to be from *Al-Masalih Al-Mursalah*; consequently, it is not a *Shari'ah* evidence. Hence, *Al-Masalih Al-Mursalah* are those that the *Shari'ah* texts indicate its consideration in a general manner, and accordingly, specific *Shari'ah* rules are built upon its basis when there is no *Shari'ah*

text regarding the event or anything which is comparable to it, in which case the interest would be the *Shari'ah* proof.

This is the summary of *Al-Masalih Al-Mursalah* and it is invalid from two angles:

Firstly: the *Shari'ah* texts from the Quran and the *Sunnah* are connected to specific actions of the worshipper; so, they are the *Shari'ah* evidence for the rule of the *Shari'ah* in that action, and they are not connected with the interests and no evidence came for the interest. When Allah (saw) said:

﴿فَرِهْنِ مَقْبُوضَةً﴾

“And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken.” (TMQ 2:283), and when He (swt) said:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ﴾

“O you who have believed, when you contract a debt for a specified term, write it down.” (TMQ 2:282), and when He said:

﴿وَأَشْهَدُوا إِذَا تَبَايَعْتُمْ﴾

“And take witnesses when you conclude a contract.” (TMQ 2:282), He (swt) was explaining only the rules of mortgaging, writing down debts and witnessing the sale. He (swt) did not make it evident whether this was an interest or not, neither by expression nor by indication, and the text does not convey whether this rule was an interest or not, neither from close nor far or by any aspect from its various angles. So, from what angle is it said that these interests are indicated by the *Shari'ah* in order for

this interest to be considered and subsequently to be considered as *Shari'ah* evidence?

Additionally, the *Shari'ah Illal* (plural of *Illah*) came in the same manner as the *Shari'ah* texts; connected to the actions of the worshipper and as evidence upon the indication of the *Shari'ah* rule in that action, and did not come to explain the interest nor the indication of the interest. So, when Allah (swt) says:

﴿كَى لَا يَكُونُ دُولَةٌ بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ﴾

“So that it will not be a perpetual distribution among the rich from among you.” (TMQ 59:7),

﴿لِكى لَا يَكُونَ عَلَى الْمُؤْمِنِينَ حَرْجٌ فِي أَزْوَاجِ أَدْعِيَائِهِمْ﴾

“In order that there not be upon the believers any discomfort concerning the wives of their adopted sons.” (TMQ 33:37) and when He (swt) says:

﴿وَالْمُؤَلَّفَةِ قُلُوبِهِمْ﴾

“And those whose hearts are to be conciliated.” (TMQ 9:60), He (swt) is only clarifying the *Illah* distributing the wealth amongst the poor rather than the rich in order to prevent the circulation of the wealth amongst the rich, and clarifying that the *Illah* of marrying the Messenger ﷺ to Zaynab is to be an explanation of the permissibility for someone to marry his adopted son's wife, and clarifying that the *Illah* for giving (money) in order to attract the hearts is the need for the State to bind the hearts together. So, He (swt) did not explain that this was benefit; rather, the explanation was that a specific issue was the *Illah* of a specific rule without any regard given to the interest or

its absence and absolutely without any consideration to it. So, from what angle then, can it be said that the *Shari'ah* indicates these reasons such that the interests can be considered *Shari'ah* evidence? If the *Shari'ah* texts did not indicate that the *Shari'ah* came for the interest, neither in its indications upon the rule nor in its indications for the *Illah* of the rule, then it is not possible for it to be said that the texts indicate specific interests or by their type since nothing at all came regarding this in the *Shari'ah* texts. Accordingly, the invalidity of the claim that the *Shari'ah* texts came as a proof for specific interests or by their type has become clear, and from greater reasoning, the interests that were not mentioned by a text from the *Shari'ah* that indicates that they are from the *Shari'ah* evidences are also not considered.

Secondly, they made a condition for *Al-Masalih Al-Mursalah* that for them to be *Mursalah*, there must be no narration of a text in the *Shari'ah* that indicates that they are considered, neither specifically nor by their type, and so their stipulation is that there should not be a specific proof for it from the *Shari'ah* and it is rather understood from the intentions of the *Shari'ah*. This alone is enough to make it void in the view of the *Shari'ah* because the lack of a proof which indicates it is enough to reject it since the rule sought is the rule of the *Shari'ah* and not the rule from the mind. Therefore, in order to consider it as being from the *Shari'ah*, it is imperative that there is a proof which indicates that it is found in what came with the Revelation, i.e. the Book and the *Sunnah*. So, the stipulation that there is no text from the *Shari'ah* that indicates it is sufficient to reject it as being from the *Shari'ah*.

With respect to *Al-Masalih Al-Mursalah* being understood from the intentions of the *Shari'ah*, the intentions of the *Shari'ah* are not a *Shari'ah* text which can be understood such that what is understood from them can be considered a proof, and so there is no value in what is understood from them as far as using them as evidence for *Shari'ah* law. Furthermore, what is meant by the intentions of the *Shari'ah*? If what is intended by it is what the

texts indicate, such as the prohibitions of fornication, stealing, murder, alcohol and apostasy from Islam, then this is not an intention of the *Shari'ah*; rather, it is the law for the actions of the worshipper and there is no looking beyond the indication of the text. So, there is no place to consider that this law which was understood from the text is *Shari'ah* evidence; rather, it is a *Shari'ah* rule. By greater reasoning, there is no account given to what the mind imagines from that law as being the purpose of the *Shari'ah* to be from the *Shari'ah* evidences. So, how would you consider that which is conceived from the mere imagination as a purpose of the *Shari'ah* to be a *Shari'ah* evidence?!! Based upon this, the validity of what is understood from the intentions of the *Shari'ah* is completely and utterly void.

As for what is intended by what is understood from all the wisdom (*Hikma*) of the *Shari'ah*, i.e. the wisdom behind sending the Messenger ﷺ and the fact that he was a mercy for all creation, then this is a *Hikma* not an *Illah*, and the *Hikma* may or may not be attained. Accordingly, it is not taken as a basis used as evidence due to the possibility of its absence; therefore, by greater reasoning, what is understood from the *Hikma* cannot be taken as a basis that is used for evidence.

Due to this, it would be incorrect to consider that what is understood from what is known as the intentions of the *Shari'ah* as being from the *Shari'ah* evidences. It is also the case from this angle that the notion that what is understood to be from the purpose of the *Shari'ah* to be *Shari'ah* evidence is completely void. Accordingly, the invalidity of the notion that *Al-Masalih Al-Mursalah* is from the *Shari'ah* evidences has become clear.

This is from the angle of the causes that made them consider that *Al-Masalih Al-Mursalah* is *Shari'ah* evidence. As for the angle of the *Shari'ah* proof that they are from the *Shari'ah* evidences, there is absolutely no *Shari'ah* proof for that at all whether from the Book or the *Sunnah*; neither a conclusive proof nor an indefinite one. For this reason, it is incorrect to consider *Al-Masalih Al-Mursalah* as being from the *Shari'ah* evidences.

From all of this, it becomes clear that the evidence that the Revelation came with from Allah (swt), which are confirmed with definite proof, are the four evidences and nothing else, and they are: the Book, the *Sunnah*, the *Ijma'* of the Companions and *Qiyas* whose *Illah* is from the *Shari'ah*, and other than these four evidences have no definite proof that indicates them. Accordingly, it has become apparent that the *Shari'ah* evidences are only these four alone.

However, it should be clear that the rules deduced from evidences other than these four, from amongst the rules that an *Imam* considered as *Shari'ah* rules, are *Shari'ah* rules in the eyes of those who advocate them and those who oppose them because there exists a vague evidence denoting that they are considered as evidences. Hence, the one who considers the general consensus of the *Ummah* as being a *Shari'ah* evidence and who then goes on to deduce from this a rule; consequently, this rule would become a *Shari'ah* rule in his or her eyes and a binding *Shari'ah* rule upon him or her, and he or she would be forbidden from taking another rule instead. The same rule also becomes a *Shari'ah* rule in the eyes of those who oppose it but it does not become a binding *Shari'ah* rule upon them. The same applies to 'the *Shari'ah* of those before us is a *Shari'ah* for us', *Al-Masalih Al-Mursalah*, *Istihsaan* and rationality.

Hence, every rule deduced from any of these evidences is considered a *Shari'ah* rule in the eyes of those who advocate that what the rule has been deduced from is part of the *Shari'ah* evidences and in the eyes of those who oppose it as well. However, it is only a binding *Shari'ah* rule upon the one who deduces it and not binding upon the one who holds a different understanding. This is like the rules deduced from the texts since the difference in understanding the text does not make the deduced rule a *Shari'ah* rule in the eyes of the one who deduced it and illegitimate in the eyes of the one that opposed him or her in this understanding. Rather, it is a *Shari'ah* rule from the viewpoint of all the Muslims as long as the possibility of reaching

such understanding from the text is possible; in other words, as long as the doubted evidence (*Shubhat Daleel*) exists. However, it is not considered a binding rule upon all the Muslims but only binding upon the one who has deduced it and the one who has emulated it, and not binding upon the one who has opposed it. Nonetheless, in any case it is a *Shari'ah* rule. Likewise, the rule deduced from an evidence is exactly like the rule deduced from the text; it is considered a *Shari'ah* rule in the eyes of all the Muslims whether for those who considered it a *Shari'ah* evidence or for those who did not consider it a *Shari'ah* evidence, provided the doubted evidence is existent, such as in the case of the previous evidences which we refuted their consideration as the *Shari'ah* evidences.

Article 13

In origin, every individual is innocent. No one should be punished without a court verdict. It is absolutely forbidden to torture anyone; and anyone who does this will be punished.

This article covers three issues: The principle of innocence, the prohibition of imposing a penalty without a judge's sentence and the prohibition of torture.

As for the first issue, its evidence is derived from what was reported by Wa'il Ibn Hajr who said:

«جَاءَ رَجُلٌ مِنْ حَضْرَمَوْتَ وَرَجُلٌ مِنْ كِنْدَةَ إِلَى النَّبِيِّ ﷺ، فَقَالَ الْحَضْرَمِيُّ:
يَا رَسُولَ اللَّهِ، إِنَّ هَذَا قَدْ غَلَبَنِي عَلَى أَرْضٍ لِي كَانَتْ لِأَيِّ، فَقَالَ الْكِنْدِيُّ: هِيَ أَرْضِي
فِي يَدَيَّ أَرْزَعُهَا لَيْسَ لَهُ فِيهَا حَقٌّ، فَقَالَ رَسُولُ اللَّهِ ﷺ لِلْحَضْرَمِيِّ: أَلَاكَ بَيْتَةٌ؟ قَالَ:

لَا، قَالَ: فَلَكَ يَمِينُهُ، قَالَ: يَا رَسُولَ اللَّهِ، إِنَّ الرَّجُلَ فَاجِرٌ لَا يُبَالِي عَلَى مَا خَلَفَ عَلَيْهِ
وَلَيْسَ يَتَوَرَّعُ مِنْ شَيْءٍ، فَقَالَ: لَيْسَ لَكَ مِنْهُ إِلَّا ذَلِكَ»

*“There came a person from Hadramaut and another from Kinda to the Prophet ﷺ. One who had come from Hadramaut said: Messenger of Allah, only this man has appropriated my land which belonged to my father. The one who had come from Kinda contended. This is my land and is in my possession: I cultivate it. There is no right for him in it. The Messenger of Allah said to the Hadramite: Have you any evidence (to support you)? He replied in the negative. The Prophet ﷺ said: Then your case is to be decided on his oath. He (the Hadramite) said: Messenger of Allah, he is a liar and cares not what he swears and has no regard for anything. Upon this the Messenger of Allah ﷺ remarked: For you then there is no other help to it.” He ﷺ said: “You have no other rights over him but this” (reported by Muslim). He ﷺ also said, “But, the onus of proof is upon the claimant, and the taking of an oath is upon him who denies.”(reported by Al-Bayhaqi with a *Sahih* chain). In the first narration, the Messenger of Allah ﷺ commissioned the plaintiff with the proof, and this means that the defendant is innocent until proven guilty; in the second narration, the Messenger of Allah ﷺ explained that in origin, the proof should be provided by the plaintiff. This serves as evidence that the defendant is innocent until proven guilty.*

As for the second matter, its evidence is derived from the saying of the Messenger of Allah ﷺ,

«... مَنْ أَخَذْتُ لَهُ مَالًا فَهَذَا مَالِي فَلْيَأْخُذْ مِنْهُ، وَمَنْ جَلَدْتُ لَهُ ظَهْرًا فَهَذَا ظَهْرِي فَلْيَقْتَصْ مِنْهُ...»

“Whosoever property I have taken from, here is my property; let him take from it, and whosoever back I have lashed, here is my back; let him lash it” (reported by Abu Ya’la from Al-Fadl bin ‘Abbas). Al-Haythami said that in the chain of Abu

Ya'la Ata' bin Muslim, who Ibn Hibban verified as trustworthy whereas others claimed he is weak, and the remainder of the men are trustworthy. It is narrated in *Al-Mu'jam Al-Awsat* of Al-Tabarani with the wording

"فَمَنْ كُنْتُ جَلَدْتُ لَهُ ظَهْرًا فَهَذَا ظَهْرِي فَلْيَسْتَقِدْ مِنْهُ وَمَنْ كُنْتُ شَتَمْتُ لَهُ عِرْضًا فَهَذَا عِرْضِي فَلْيَسْتَقِدْ مِنْهُ وَمَنْ كُنْتُ أَخَذْتُ لَهُ مَالًا فَهَذَا مَالِي فَلْيَسْتَقِدْ مِنْهُ"

"Whosever back I have lashed, here is my back, let him do the same to it, and whosever honour I have abused, here is my honour, let him do the same to it, and whosoever property I have taken from, here is my mine; let him do the same to it". And in Ibn Kathir's *Al-Bidayah Wa-Nihayah* it came with the wording

"أَلَا فَمَنْ كُنْتُ جَلَدْتُ لَهُ ظَهْرًا فَهَذَا ظَهْرِي فَلْيَسْتَقِدْ وَمَنْ كُنْتُ أَخَذْتُ لَهُ مَالًا فَهَذَا مَالِي فَلْيَأْخُذْ مِنْهُ وَمَنْ كُنْتُ شَتَمْتُ لَهُ عِرْضًا فَهَذَا عِرْضِي فَلْيَسْتَقِدْ"

"Whosever back I have lashed, here is mine, let him do the same to it, and whosoever property I have taken from, here is mine, so take from it, and whosever honour I have abused, here is my honour, let him do the same". The Messenger of Allah ﷺ said this in his capacity as a ruler; it means let the one who has been wrongly punished retaliate against me and this serves as evidence prohibiting the ruler from punishing any of the subjects without establishing the charge for which he deserves such punishment. Also, it is reported in the story of the *Mula'annah* (husband's accusation of his spouse of adultery without witnesses) that the Messenger of Allah ﷺ said

«لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُهَا»

"If I were going to have anyone stoned without proof, I would stone her" (agreed upon and the wording is from Muslim), and this means that he ﷺ did not stone her due to the absence of clear proof even though there was doubt over her. This

understanding is confirmed by what is narrated by Ibn Abbas in the narration in which the Messenger of Allah ﷺ ordered a *Mula'annah* to be carried out between the couple (refer to Quran 24: 4-9), where the text says ***“So a man at the gathering said to Ibn Abbas: “Is she the woman about whom the Messenger of Allah ﷺ said:***

«لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُهَا»

“If I were going to have anyone stoned without proof, I would stone such?”

He said: “No, that was a woman who arouse suspicion by her outright misbehavior” (agreed upon), meaning that she used to be indiscreet but it was not proven; neither through evidence and nor through admission. This means that the suspicion of adultery was there, but despite this the Messenger of Allah ﷺ did not stone her, for it had not been confirmed, and so he ﷺ said:

«لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُهَا»

“If I were to stone anyone, I would have her stoned”. The conjunction “*if*” in the Arabic language denotes abstention due to the absence of something, thus the stoning was not carried out due to the absence of evidence. This serves as evidence that the ruler is forbidden from imposing a penalty on anyone from among the subjects, unless he or she perpetrates a crime which the *Shari'ah* deems to be a crime, and once his or her perpetration of the crime has been proven before a competent judge and in a court of law, because the evidence could not be admissible unless it is established before a competent judge and in a court of law.

However, the ruler reserves the right to take someone accused of a crime into custody before the charge is established, pending a court appearance to look into the charge brought against him. However, the detention should be for a limited period of time and it would be wrong to detain the accused for an

indefinite period. This period must be short. Evidence about the permissibility of detaining the accused is derived from what Al-Tirmidhi reported in a *Hasan* narration, which Ahmad also reported, and Al-Hakim stated that the narration has a *Sahih* chain, on the authority of Bahz bin Hakim on that of his father on that of his grandfather who said:

«أَنَّ النَّبِيَّ ﷺ حَبَسَ رَجُلًا فِي تُهْمَةٍ، ثُمَّ خَلَّى عَنْهُ»

“The Messenger of Allah ﷺ detained a person accused of a crime and then he released him.” It has also been reported similarly by Al-Hakim on the authority of Abu Hurayrah that

«أَنَّ النَّبِيَّ ﷺ حَبَسَ فِي تُهْمَةٍ يَوْمًا وَلَيْلَةً»

“The Messenger of Allah ﷺ detained someone accused of a crime for a day and a night”, and though the chain includes Ibrahim bin Khaitam who there is dispute over, it has also been reported though other chains by Al-Bayhaqi in *Al-Kubra* and Ibn Al-Jarud in *Al-Muntaqi* on the authority of Bahzi bin Hakim bin Mu’awiyah on that of his father on that of his grandfather:

«أَنَّ النَّبِيَّ ﷺ حَبَسَ رَجُلًا فِي تُهْمَةٍ سَاعَةً مِنْ نَهَارٍ ثُمَّ خَلَّى عَنْهُ»

“The Prophet ﷺ detained someone accused of a crime for an hour during the day and then released him”. All of this is evidence about the obligation of limiting the period of detention, and that it should be for the shortest time possible, since the Messenger of Allah ﷺ detained him for a day and a night, and that he detained him for an hour during the day. Besides, this detention is not a punishment, but it is rather a detention aimed at helping with the enquiries.

As for the third matter, it denotes the prohibition of imposing a penalty upon the accused before the charge against him has been established; it also denotes the prohibition of imposing a penalty which Allah (swt) has made as a punishment

in the hereafter, that is the Hellfire, in other words, the prohibition of punishing by burning with fire. As for the prohibition of inflicting a punishment before establishing the charge, its evidence is derived from the narration of the Messenger of Allah ﷺ in which he ﷺ was reported to have said

«لَوْ كُنْتُ رَاجِمًا أَحَدًا بِغَيْرِ بَيِّنَةٍ لَرَجَمْتُهَا»

“If I were to have someone stoned without proof, I would have her stoned” (agreed upon from the narration of Ibn Abbas), despite the fact that she was known to be an adulteress according to what is understood from the words of Ibn Abbas. If it were fitting to inflict punishment upon the accused in order to make them confess, the Messenger of Allah ﷺ would have tortured that woman to make her confess, knowing that she was indiscreet about her illicit behaviour. It is absolutely forbidden to punish the accused and ,therefore, it is forbidden to beat the accused before the charge has been established. It is also forbidden to insult him or to inflict upon him any punishment as long as his guilt has not been confirmed. This is supported by what has been narrated from Ibn Abbas:

«شَرِبَ رَجُلٌ فَسَكِرَ، فَلَقِيَ يَمِيلُ فِي الْفَجِّ، فَانْطَلَقَ بِهِ إِلَى النَّبِيِّ ﷺ فَلَمَّا حَاذَى بِدَارِ الْعَبَّاسِ انْفَلَتَ فَدَخَلَ عَلَى الْعَبَّاسِ فَالْتَزَمَهُ، فَذَكَرَ ذَلِكَ لِلنَّبِيِّ ﷺ فَضَحِكَ وَقَالَ: أَفَعَلَهَا وَلَمْ يَأْمُرْ فِيهِ بِشَيْءٍ»

“A man who had drunk wine and become intoxicated was found staggering on the road, so he was taken to the Prophet ﷺ. When he was opposite Al-Abbas's house, he escaped, and entered Al-Abbas's house, so he grasped hold of him. When that was mentioned to the Prophet ﷺ, he laughed and said: Did he do that? and he gave no command regarding him.” (reported by Abu Dawud and Ahmad, with the wording from Abu Dawud). So the Messenger of Allah ﷺ did not apply the punishment upon that man because he did not confess and nor

were the charges against him established in his presence. This means that he was accused of drunkenness but this was not confirmed and thus he was not tortured in order to make him confess and no penalty was imposed upon him just for the mere accusation. Therefore, it would be wrong to inflict any punishment on the accused prior to the establishment of the charge before a competent judge and in a court of law.

As for the reports of “*Al-Ifk*” (the lie) incident that ‘Ali (ra) beat the slave-girl before the Messenger of Allah ﷺ, it should be recognised that the slave-girl was not accused, thus it cannot be used as evidence denoting the permissibility of beating the accused. Besides the narration of ‘Ali’s (ra) beating of Burayrah, the Messenger of Allah’s ﷺ slave-girl, was reported by Bukhari and he said that ‘Ali (ra) said to the Messenger of Allah ﷺ “Ask the slave-girl”. It was the Messenger of Allah ﷺ who did the asking. Bukhari did not mention that ‘Ali (ra) had beaten the slave-girl. To quote from the narration

«وَأَمَّا عَلِيُّ بْنُ أَبِي طَالِبٍ فَقَالَ: يَا رَسُولَ اللَّهِ، لَمْ يُضَيَّقِ اللَّهُ عَلَيْكَ وَالنِّسَاءَ، سِوَاهَا كَثِيرٌ، وَإِنْ تَسْأَلِ الْجَارِيَةَ تَصُدِّقُكَ، قَالَتْ: فَدَعَا رَسُولُ اللَّهِ ﷺ بَرِيرَةَ فَقَالَ: أَيُّ بَرِيرَةُ»

“Ali bin Abi Talib said O Messenger of Allah ﷺ, Allah has not made it hard upon you and there are plenty of other women other her, and if you ask the slave-girl, she will tell you the truth.” So the Messenger of Allah ﷺ summoned the slave-girl and said: “O Burayrah!...” In another narration from Al-Bukhari, it was reported:

«وَلَقَدْ جَاءَ رَسُولُ اللَّهِ ﷺ بَيْتِي فَسَأَلَ عَنِّي خَادِمَتِي، فَقَالَتْ: لَا وَاللَّهِ، مَا عَلِمْتُ عَلَيْهَا عَيْبًا إِلَّا أَنَّهَا كَانَتْ تَرْفُذُ حَتَّى تَدْخُلَ الشَّاةُ فَتَأْكُلَ خَمِيرَهَا أَوْ عَجِينَهَا، وَانْتَهَرَهَا بَعْضُ أَصْحَابِهِ فَقَالَ: اصْدُقِي رَسُولَ اللَّهِ ﷺ حَتَّى اسْقَطُوا لَهَا بِهِ»

“The Messenger of Allah ﷺ came to my house and asked about my slave-girl; she said: “No by Allah, I do not know of any fault in her other than that she would sleep to the point that the sheep would enter and eat her dough. Some of his companions rebuked her and said: “Tell the truth to the Messenger of Allah...””, and Al-Bukhari did not mention that ‘Ali (ra) had beaten the slave-girl.

However, in other reports, it was mentioned that ‘Ali (ra) had beaten the slave-girl. Ibn Hisham mentioned that he did beat her. In the *Sirah* of Ibn Hisham it was reported:

«وَأَمَّا عَلِيٌّ فَإِنَّهُ قَالَ: يَا رَسُولَ اللَّهِ إِنَّ النِّسَاءَ كَثِيرٌ، وَإِنَّكَ لَقَادِرٌ عَلَى أَنْ تَسْتَخْلِفَ، وَسَلِ الْجَارِيَةَ فَإِنَّهَا سَتَصْذُفُكَ، فَدَعَا رَسُولُ اللَّهِ ﷺ بَرِيرَةَ لَيْسَاءَهَا، فَقَامَ إِلَيْهَا عَلِيٌّ بْنُ أَبِي طَالِبٍ فَضَرَبَهَا ضَرْبًا شَدِيدًا وَيَقُولُ: اصْذُقِي رَسُولَ اللَّهِ ﷺ، قَالَتْ، فَتَقُولُ: وَاللَّهِ مَا أَعْلَمُ إِلَّا خَيْرًا»

“As for ‘Ali, he said: “O Messenger of Allah ﷺ Women are many, and you can easily take one for another. Ask the slave-girl, for she will tell you the truth.” So the Messenger of Allah ﷺ called Burayrah to ask her, and ‘Ali got up and gave her a violent beating, and said: “Tell the Messenger of Allah ﷺ the truth.” To which she replied: “I know only good of her”. Assuming that this report is sound, it however does not stipulate the permissibility of beating the accused, because the slave-girl Burayrah was not accused in this case and it cannot be said that she was a witness. She was not beaten for being a witness because the Messenger of Allah ﷺ did ask other people but did not beat them. He ﷺ asked Zaynab Bint Jahsh and he did not beat her, despite the fact that her sister Hamnah Bint Jahsh used to spread rumours about 'Aisha (ra) as Al-Bukhari reported in the narration of *Al-Ifk*:

«قَالَتْ وَطَفِقَتْ أُخْتُهَا حَمْنَةُ تُحَارِبُ لَهَا، فَهَلَكَتْ فَيَمُنْ هَلَكَ»

“She said: her sister Hamna set about fighting her battle; she perished alongside those who perished”. Hence, Zaynab was suspected of knowing something and she was questioned, but she was never beaten. Therefore, it would be wrong to say that Burayrah was beaten in her quality as a witness; rather, she was rather beaten in her quality as the slave-girl of the Messenger of Allah ﷺ. The Messenger of Allah ﷺ is entitled to beat his slave-girl and to order her beating. The Messenger of Allah ﷺ did ask his slave-girl and he asked others as well and at the same time he kept silent over Ali’s (ra) beating of the slave-girl and over the companions reprimanding her. However he ﷺ did not beat any other person and nor did he keep silent over the beating of any other person, which indicates that he ﷺ permitted her beating because she was his ﷺ slave-girl, and one is entitled to beat his slave-girl in order to discipline her or to investigate a matter. Therefore, this narration cannot be used as evidence about the permissibility of beating the accused and the evidence pertaining to the prohibition of his beating stands; this is reflected in the saying of the Messenger of Allah ﷺ:

«لَوْ كُنْتُ رَاجِمًا أَحَدًا بَغَيْرِ بَيِّنَةٍ لَرَجَمْتُهَا»

“If I were to stone someone without proof, I would have her stoned.” (agreed upon from Ibn Abbas). Therefore, it is absolutely forbidden to beat, insult, reprimand or torture the accused. It is however permitted to detain him because evidence exists about this.

This is as far as the prohibition of inflicting punishment upon the accused prior to establishing the charge is concerned. As for the prohibition of inflicting a punishment which Allah (swt) has made a punishment in the Hereafter, its evidence is reflected in what Al-Bukhari reported on the authority of ‘Ikrimah who said:

«أَتَى عَلِيٌّ رَضِيَ اللَّهُ عَنْهُ بِزَنَادِقَةٍ فَأَحْرَقَهُمْ، فَبَلَغَ ذَلِكَ ابْنُ عَبَّاسٍ فَقَالَ: لَوْ
كُنْتُ أَنَا لَمْ أُحْرِقْهُمْ لَنَهَى رَسُولُ اللَّهِ ﷺ لَا تُعَذِّبُوا بِعَذَابِ اللَّهِ»

“Some Zanadiqa (atheists) were brought to `Ali and he burnt them. The news of this event, reached Ibn `Abbas who said, 'If I had been in his place, I would not have burnt them, as Allah's Prophet ﷺ forbade it, saying, 'Do not punish anybody with Allah's punishment (fire)'. Al-Bukhari narrated on the authority of Abu Hurayrah that the Messenger of Allah ﷺ said

«وَإِنَّ النَّارَ لَا يُعَذِّبُ بِهَا إِلَّا اللَّهُ»

“it is none but Allah Who punishes with fire”. Abu Dawud reported from the narration of Ibn Mas’ud with the words,

«فَإِنَّهُ لَا يُعَذِّبُ بِالنَّارِ إِلَّا رَبُّ النَّارِ»

“for no one punishes with fire except the Lord of the fire”. Therefore, if the accused was brought before a competent judge in a court of law and shown to have committed the crime he was accused of, he should not be punished by fire, nor by that which is similar to it, such as electricity and nor by anything else which Allah (swt) punishes with. Furthermore, it is forbidden to inflict any punishment from among those not decreed by the Legislator (swt). This is so because the Legislator (swt) has determined the punishments to be imposed upon the guilty parties, and these are killing, lashing, stoning, exile, cutting, and imprisonment, destruction of property, imposing a fine, vilification and branding any part of the body. Apart from these, it is forbidden to inflict any other type of punishment upon anyone. Hence, no one should be punished by burning with fire, though it is permitted to burn his property, and nor should anyone be punished by pulling his nails, nor by pulling his eyebrows, nor by electrocution, nor by drowning, nor by pouring cold water over him, nor by starving him, nor by letting him go cold and nor by

anything similar. Punishing the accused should be confined to the penalties decreed by the *Shari'ah* and the ruler is forbidden from applying any other form of punishment apart from these. Therefore, it is absolutely forbidden to torture anyone, and whoever does so will be violating the *Shari'ah*. If it is established that someone has tortured anyone else, he will be punished. These are the evidences of this article.

Article 14

Actions are originally bound by the *Shari'ah* rules. Hence, no action should be undertaken unless its rule is known. The things on the other side are originally *Mubah* (permitted) as long as there is no evidence that stipulates prohibition.

The Muslim is commanded to conduct his actions according to the *Shari'ah* rules. Allah (swt) says

﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ﴾

“But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among.” (TMQ 4:65).

He (swt) also says,

﴿وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا﴾

“And whatever the Messenger has given you - take; and what he has forbidden you - refrain from.” (TMQ 59:7).

Therefore, the origin is that the Muslim restricts himself to the *Shari'ah* rules. Besides that the *Shari'ah* principle states: “*No rule before the advent of Shari'ah*”. In other words, no matter should be given any rule whatsoever before the advent of the rule of Allah (swt) pertaining it. Hence, before the advent of Allah's

(swt) rule, no matter should be given any rule. This means that it should not be given the rule of permissibility, for the *Ibaha* is a *Shari'ah* rule that must be established through the address of the Legislator; otherwise it cannot be considered a *Shari'ah* rule. This is so because the *Shari'ah* rule is the speech of the Legislator related to the actions of the worshippers. Therefore, anything that has not been mentioned in the address of the Legislator cannot be considered a *Shari'ah* rule. Therefore, permissibility is not the non-advent of a prohibition, it is rather the advent of *Shari'ah* evidence stipulating the *Mubah* (permitted); in other words, the advent of the choice from the Legislator to either undertake or abstain. Therefore, the origin is the abidance by the speech of the Legislator, not the *Ibahah*; because the rule of *Ibahah* itself requires a confirmation from the speech of the Legislator. This principle is general, covering the actions and the things. So if a Muslim wanted to perform any action, it would be incumbent upon him to abide by the rule of Allah (swt) pertaining that action. Therefore, he must search for that rule until he knows it and abides by it. In the same manner if a Muslim wanted to take or give anything, whatever that object may be, it is incumbent upon him to abide by the rule of Allah (swt) regarding that object. So he must search for that rule until he knows it and abides by it. This is what the verses and the *hadith* have indicated in their literal indication and their understanding. Therefore, it is forbidden for a Muslim to undertake any action or to act towards anything upon other than the *Shari'ah* rule; rather he is obliged to abide by the *Shari'ah* rule in every action he undertakes and in every matter. After Allah (swt) revealed

﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأُمِّمْتُ عَلَيْكُمْ نِعَمَتِي وَرَضِيتُ لَكُمُ الْإِسْلَامَ

دِينًا﴾

“This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion.” (TMQ 5:3), and after He (swt) says,

﴿وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تَبَيِّنًا لِّكُلِّ شَيْءٍ﴾

“And We have sent down to you the Book as clarification for all things.” (TMQ 16:89), neither one single action, nor one single object has been left except that Allah (swt) has explained the evidence for its rule, and it is forbidden for anyone, having understood these two verses, to claim that some actions, some things or some situations are devoid of the *Shari’ah* rule; meaning that *Shari’ah* has completely ignored it and ,therefore, it failed to designate an evidence or a sign to draw the attention of the obligated to the presence of this *Shari’ah* rule, in other words, the presence of an *Illah* that indicated the rule to the person obligated to abide by it; is it *Wajib*, or *Mandub*, or *Haram*, or *Makruh* or *Mubah*? Such a claim and anything similar is considered a slander against *Shari’ah*. Therefore, it is forbidden for anyone to claim that such action is permitted because no *Shari’ah* rule related to it has been mentioned and the principle is that if no *Shari’ah* rule is mentioned it must be permitted, and in the same way it is not permitted for anyone to say that this object is permitted because there is no *Shari’ah* evidence related to it so the origin is permissibility if there is no *Shari’ah* evidence. It is forbidden to claim this because every action and everything has its evidence in *Shari’ah*; one must search for the rule of Allah (swt) pertaining to the action or the object to take it and apply it as opposed to making it permitted under the pretext that there is no evidence for it.

However, since the *Shari’ah* rule is the speech of the Legislator related to the actions of the worshippers, the speech has ,therefore, come to deal with the action of the worshipper, not to deal with the object. This speech has come to deal with the object in consideration of its connection to the action of the worshipper. Thus the speech is originally directed at the action of the worshipper and the object came linked to the action of the worshipper. This is whether the speech was regarding the action

without any mention of the object whatsoever, such as Allah (swt) saying

﴿كُلُوا وَاشْرَبُوا﴾

“Eat and drink” (TMQ 2:60), or it has come regarding the object without any mention of the action whatsoever, such as Allah (swt) saying

﴿حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالْدَّمُ وَلَحْمُ الْخِنْزِيرِ﴾

“Prohibited to you are dead animals, blood, the flesh of swine.” (TMQ 5:3). Accordingly, the rule of prohibition in these three things is only in relation to the action of the worshipper in terms of eating, buying, selling and hiring and other actions. Therefore, the *Shari'ah* rule deals with the action of the worshipper, whether this were a rule for the action or a rule for the object. This is why the origin in actions is to be restricted (to the *Shari'ah* rule) because the address is only related to the action of the worshipper.

However, by scrutinising the elaborated evidences of the *Shari'ah* rules, it becomes clear that within the texts which have come as evidences of the rules, the state of the text that acts as an evidence for the action is different to the state of the text that acts as evidence for the object, in terms of the manner in which the address is directed. In the text related to the action, the address is directed to the action alone, regardless of whether the object is mentioned or not. For instance, Allah (swt) says,

﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾

“Allah has permitted trade and has forbidden interest.” (TMQ 2:275) And He (swt) says,

﴿فَتَبَلَّغُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ﴾

“O you who have believed, fight those adjacent to you of the disbelievers.” (TMQ 9:123) And He (swt) says,

﴿لِيُنْفِقْ ذُو سَعَةٍ مِّن سَعَتِهِ﴾

“Let a man of wealth spend from his wealth.” (TMQ 65:7) And He (swt) says,

﴿فَلْيُؤَدِّ الَّذِي أُؤْتِمِنَ أَمْنَتَهُ﴾

“And if one of you entrusts another, then let him who is entrusted discharge his trust [faithfully].” (TMQ 2:283) And Allah (swt) says,

﴿كُلُوا وَاشْرَبُوا﴾

“Eat and drink” (TMQ 2:60). And the Messenger of Allah ﷺ said

«الْبَيْعَانِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا»

“Both parties in a business transaction have the right (the choice to annul it) so long as they have not separated.” agreed upon through Ibn Umar and others.

And he ﷺ said

«أَعْطُوا الْأَجِيرَ أَجْرَهُ»

“Give the worker his wage” reported by Ibn Maja through Ibn Umar and Al-Bayhaqi through Abu Hurayrah with a chain that was deemed as *Hasan* by Al-Baghawi.

In all of these texts, the address has been directed at the action, and the object has not been mentioned.

And in other examples, Allah (swt) says,

﴿وَمِنْ كُلِّ تَأْكُلُونَ لَحْمًا طَرِيًّا﴾

“And from each you eat tender meat.” (TMQ 35:12).
And He (swt) says,

﴿لِتَأْكُلُوا مِنْهُ لَحْمًا طَرِيًّا﴾

“To eat from it tender.” (TMQ 16:14). And He (swt) says,

﴿وَأَخْرَجْنَا مِنْهَا حَبًّا فَمِنْهُ يَأْكُلُونَ﴾

“And brought forth from it grain, and from it they eat.” (TMQ 36:33). And He (swt) says,

﴿إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا﴾

“Indeed, those who devour the property of orphans unjustly.” (TMQ 4:10). And Allah (swt) says,

﴿لِيَأْكُلُوا مِنْ ثَمَرِهِ﴾

“That they may eat of His fruit.” (TMQ 36:35).

The address in all these is also directed at the action, although the object has been mentioned and this is similar to the address related directly to the action of the worshipper.

This state is different to the state of the text related to the object, where the address is directed exclusively towards the object, regardless of whether the action was mentioned alongside it or not. For instance Allah (swt) says

﴿حُرِّمَتْ عَلَيْكُمُ الْمَيِّتَةُ﴾

“Prohibited to you are dead animals.” (TMQ 5:3).
Allah (swt) also says

﴿إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنزِيرِ﴾

“He has only forbidden to you dead animals, blood, the flesh of swine.” (TMQ 2:173). Allah (swt) also says

﴿وَأَنْزَلْنَا مِنَ السَّمَاءِ مَاءً﴾

“And We have sent down rain from the sky.” (TMQ 23:18). Allah (swt) also says

﴿وَجَعَلْنَا مِنَ الْمَاءِ كُلَّ شَيْءٍ حَيٍّ﴾

“And made from water every living thing.” (TMQ 21:30). Also, the saying of the Messenger of Allah (saw) pertaining the sea water:

«هُوَ الطَّهُّورُ مَأْوُهُ الْحِلُّ مَيْتَتُهُ»

“*Its water is pure (and a means of purification) and its 'dead meat' is permissible (to eat).*” (Sahih as reported by Malik through Abu Hurayrah).

In all of these the address is directed at the object without mention of the action.

For instance, Allah (swt) says

﴿إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ﴾

﴿فَاجْتَنِبُوهُ﴾

“O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.” (TMQ 5:90).

Allah (swt) says

﴿أَفَرَأَيْتُمُ الْمَاءَ الَّذِي تَشْرَبُونَ﴾

“Have you seen the water that you drink?” (TMQ 56:68).

Allah (swt) says

﴿أَفَرَأَيْتُمُ النَّارَ الَّتِي تُورُونَ﴾

“Have you seen the fire that you kindle?” (TMQ 56:71).

Allah (swt) says

﴿وَمِنْ ثَمَرَاتِ النَّخِيلِ وَالْأَعْنَابِ تَتَّخِذُونَ مِنْهُ سَكَرًا﴾

“And from the fruits of the palm trees and grapevines you take intoxicant.” (TMQ.16:67).

Allah (swt) says

﴿نُسْقِيكُمْ مِمَّا فِي بُطُونِهِمْ مِنْ بَيْنِ فَرْثٍ وَدَمٍ لَبَنًا خَالِصًا سَائِغًا﴾

﴿لِّلشَّارِبِينَ﴾

“And indeed, for you in grazing livestock is a lesson. We give you drink from what is in their bellies - between excretion and blood - pure milk, palatable to drinkers.” (TMQ 16:66).

The address in all of these texts is directed at the object, though the action has been mentioned. Such an address is related to the object; thus it is an outlining of a rule pertaining to that object. However, the rule’s relation to the object is reflected in the fact that it outlines its rule vis-à-vis the action of the worshipper, not vis-à-vis the object detached from the action of the servant, since it is inconceivable for a object to have a rule unless it is

related to the servant. Therefore, the difference in the state of the text becomes clear with regard to the manner in which the address is targeted.

This difference indicates that although the *Shari'ah* rule is the speech of the Legislator related to the actions of the worshippers some rules specified to things have however come to outline the rule of these things in an unrestricted manner, even though their rule was in relation to the worshipper as opposed to being isolated from the worshipper. Through scrutiny, this indication outlines to us that the rules of things have come through a general evidence, which in turn has come to outline the evidence of the actions, and that whatever came specifically related to things is in fact an exception from the general rule which had come as evidence for them through the evidence of the actions. This is so because detailed study has revealed that the *Shari'ah* text in which the address was directly targeted at the action has come in general terms. Therefore, all the things related to it would be permitted because the request to perform or the choice was general, encompassing all that which is permitted vis-à-vis this request, and the prohibition of something requires a text. For instance, Allah (swt) says

﴿وَسَخَّرَ لَكُم مَّا فِي السَّمٰوٰتِ وَمَا فِي الْاَرْضِ جَمِيعًا مِّنْهُ﴾

“And He has subjected to you whatever is in the heavens and whatever is on the earth - all from Him.” (TMQ 45:13). This means that the things in the skies and the earth have been created for us by Allah, and ,therefore, are permitted.

Allah (swt) also says

﴿وَاَحَلَّ اللّٰهُ الْبَيْعَ﴾

“Allah has permitted trade and has forbidden interest (usury).” (TMQ 2:275) which means that Allah (swt) has made the buying and selling of all things permitted; thus the *ibahah* of selling and buying any of these things does not require an evidence, because the general evidence comprises everything. So, the prohibition of selling something, such as alcohol for instance, requires evidence.

Also, Allah (swt) says

﴿كُلُوا مِمَّا فِي الْأَرْضِ حَلَلًا طَيِّبًا﴾

“O mankind, eat from whatever is on earth [that is] lawful and good.” (TMQ 2:168) which means that eating everything is *Halal* (lawful); thus the eating of a specific item does not require an evidence to make it *Halal*, because the general evidence has made it *Halal*. The prohibition of eating something, such as dead meat for instance, requires evidence.

Allah (swt) says

﴿وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا﴾

“And eat and drink, but be not excessive (extravagant).” (TMQ 7:31) which means that the drinking of everything is permitted; thus the drinking of a specific item does not require an evidence to make it permitted, because the general evidence has made it permitted. However, the prohibition of drinking a specific item, such as intoxicants for instance, requires evidence.

Similar to these, general evidences are found permitting everything related to actions such as talking, walking, playing, smelling, inhaling, looking and other actions which man performs; thus the permission of anything related to them does not require an evidence, but the prohibition of anything related to these actions does require an evidence to make it forbidden.

Therefore, the evidences brought by the texts and targeted at the actions have outlined the rule of things in a general and unrestricted manner; ,therefore, they do not require other texts to outline their rules. Thus, the advent of specific texts related to things, once the general rule of these things had been outlined, serves as evidence that these specific rules have come to exclude the rule of these things from the general rule. Hence, the *Shari'ah* texts have come to outline the *Shari'ah* rule pertaining things, denoting that they are permitted; hence, they are permitted unless a text exists to prohibit them. It is in this manner that the *Shari'ah* principle “*The origion of things is ibahah*” is derived. These are the evidences for this article.

Article 15

The means to *Haram* (unlawful) are forbidden if they most likely lead to *Haram*. But if there is a doubt that a means might lead to *Haram*, then this means will not be forbidden.

The evidence of this article is reflected in Allah’s (swt) saying

﴿وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ﴾

“**And do not revile those they invoke other than Allah, lest they insult Allah in enmity without knowledge.**” (TMQ 6:108). Insulting the disbelievers is permissible and Allah (swt) has insulted them in the Quran. However, if this insult were to lead the disbelievers to most probably insult Allah (swt), it would become prohibited. This is because insulting Allah (swt) is not permitted and it is prohibited in the sternest fashion. This is how the *Shari'ah* principle, “*the means to something forbidden is also forbidden*”, has been deduced. However, the means becomes prohibited if it would most likely lead to something prohibited, since the prohibition of insulting their idols was because it was

the cause which would lead to the insulting of Allah (swt) – as demonstrated by the use of the letter “fa” (lest) of causality in the verse, and if it was not most likely that Allah (swt) will be insulted because of insulting their idols, like the most likely probability (*ghalabat Al-dhann*) required in any *Shari’ah* rule, then the “fa” which indicates causality would not have been used to indicate the prohibition. Therefore, if the means were not considered in the most likely probability to lead to *Haram* but it was merely feared that it may lead to *Haram*, such as a woman going out without a face cover, where it is feared that it might cause *Fitnah*, the means in this case would not be *Haram*, because the mere fear that it might lead to *Haram* is not sufficient to warrant a prohibition. On top of that, the *Fitnah* with respect to itself is not prohibited upon the woman herself. This is the evidence of this article.

Another similar principle to this one is the following principle: “*If one specific item of a Mubah thing leads to harm, that particular item becomes Haram and the thing remains Mubah*”. This is reflected in what is narrated when the Messenger of Allah ﷺ passed through the land of Al-Hijr and people took water from its well. When they left the Messenger of Allah ﷺ said

«لَا تَشْرَبُوا مِنْ مَائِهَا شَيْئًا، وَلَا تَتَوَضَّؤُوا مِنْهُ لِلصَّلَاةِ، وَمَا كَانَ مِنْ عَجِينٍ عَجَنْتُمُوهُ فَأَعْلِفُوهُ الْإِبِلَ وَلَا تَأْكُلُوا مِنْهُ شَيْئًا، وَلَا يَخْرُجَنَّ أَحَدٌ مِنْكُمْ اللَّيْلَةَ إِلَّا وَمَعَهُ صَاحِبٌ لَهُ»

“Do not drink anything from its water and do not use it to make ablution for prayer. And whatever dough you prepared, give to the animals and do not eat anything from it. And no one goes out tonight but with a company.” reported by Ibn Hisham in his *Sirah* and Ibn Hibban in his *Al-Thiqat*. Drinking water is permitted, but that particular water, which is the water of Thamud, has been made prohibited by the Messenger of Allah ﷺ because it led to harm. However, water in general remained

permitted. Also, it is permitted for a person to go out at night without a companion, but the Messenger of Allah ﷺ prohibited anyone from among that army, in that particular night and at that particular place, from going out because it led to harm. Apart from this, going out at night without a companion remained permitted. This serves as evidence that a particular item of the permitted thing becomes prohibited if it led to harm, while the thing in general remains permitted.

The System of Ruling

Article 16

The system of ruling is a unitary system and not a federal system.

The only correct system for ruling is the unitary system and nothing else is acceptable. This is because the *Shari'ah* evidence brought it alone and prohibited anything else; it was narrated by 'Abd Allah b. Amr b. Al-'As that he heard the Messenger of Allah ﷺ say

«وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفَقَةَ يَدِهِ وَتَمَرَةَ قَلْبِهِ فَلْيُطِعهُ إِنِ اسْتَطَاعَ، فَإِنْ جَاءَ آخَرُ يُنَازِعُهُ فَاضْرِبُوا عُنُقَ الْآخَرِ»

“He who swears allegiance to a Caliph should give him the grasp of his hand and the sincerity of his heart (i. e. submit to him both outwardly as well as inwardly). He should obey him to the best of his capacity. If another man comes forward (as a claimant to Caliphate), disputing his authority, they (the Muslims) should behead the latter.” (reported by Muslim). And it is narrated by Abu Sa'id Al-Khudri that the Messenger of Allah ﷺ said,

«إِذَا بُويعَ لِخَلِيفَتَيْنِ، فَاقْتُلُوا الْآخَرَ مِنْهُمَا»

“When oath of allegiance has been taken for two caliphs, kill the one for whom the oath was taken later.” (reported by Muslim). The angle of deduction from these two narrations is that the first narration explains that in the scenario that the Imamate, in other words, the *Khilafah*, is given to him to dispute with him over this *Khilafah* it would be obligatory to fight him and to kill him if he did not give up his contention. So the narration clarifies that whoever contends the leadership of the

Khalifah in the *Khilafah* must be fought. And this is an allusion to indicate the prohibition of the division of the state, encouragement not to permit its division and prohibiting any separation from it even through the use of force to maintain its unity. As for the second narration, it is regarding the scenario when the state does not have a head, in other words, a *Khalifah*, and the leadership of the state, in other words, the *Khilafah*, was given to two people and so the second of them should be killed, and by greater reasoning if it was given to more than two. And this is an allusion to indicate the prohibition of the division of the state. This means the prohibition of making the state into multiple states and it being obligatory that the state is one. Consequently the system of ruling in Islam is a unitary system and not a federal system and anything other than the unitary system is conclusively prohibited, and for this reason the article was drafted.

Article 17

The ruling is centralised and the administration is decentralised.

This article was drafted in order to separate between the rule and the administration. The difference between the two of them is apparent from two angles: from the reality of each of them and from the actions of the Messenger of Allah ﷺ in the appointment of the governors (*Wali*) and the assignment of civil employees. As for the reality of each of them, the rule (*Hukm*), power (*Mulk*) and the authority (*Sultan*) have the same meaning, and that is the authority which implements the laws. It is mentioned in the *Al-Muheet* dictionary that “...*Al-Mulk* is greatness and *Sultan*”, and in another place “*Al-Sultan* is the proof and the capability of *Mulk*”, and in a third place “*Al-Hukm*: the decree...and *Al-Haakim* is the one who implements the *Hukm*”. And this means that the rule linguistically means the decree and the *Haakim* (ruler) linguistically is the implementer of the rule,

and what is intended by the rule in this article is the terminological meaning; the implementation of the laws, in other words, the power, the authority and the capability of rule. Or by another expression, the action of leadership which the *Shari'ah* obligated upon the Muslims with the words of the Messenger ﷺ

«وَلَا يَحِلُّ لثَلَاثَةٍ نَفَرٍ يَكُونُونَ بِأَرْضٍ فَلَاةٍ إِلَّا أَمَرُوا عَلَيْهِمْ أَحَدَهُمْ»

“It is unlawful for three people in any barren land not to appoint one of them as their leader” reported by Ahmad through ‘Abd Allah Bin Amr, and the action of leadership is the authority which is used to prevent injustice and to settle disputes, or by another expression the rule is the guardianship of the authority mentioned in His (swt) words

﴿أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ﴾

“O you who have believed, obey Allah and obey the Messenger and those in authority among you.” (TMQ 4:59) and His (swt) words

﴿وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولِيَ الْأَمْرِ مِنْهُمْ﴾

“But if they had referred it back to the Messenger or to those of authority among them.” (TMQ 4:83), which is the undertaking of practically governing matters. This is the reality of the rule. Based upon that, the guardianship of the authority, the leadership and the power are the rule, and anything else is considered to be administration. Consequently, what the *Khalifah* and the leaders from the governors and workers do in terms of managing the affairs of people by implementing the *Shari'ah* rules and the legal judgments is considered to be the rule; anything else from what they or others do from those who were appointed from the people or by the *Khalifah* is considered to be administration. Accordingly the difference between the ruling and administration has become obvious.

The *Shari'ah* gave the rule as described to the *Khalifah* who was elected by the *Ummah*, or the *Amir* chosen by them, so by the *Ummah's* choice for the *Amir* or by her pledge of allegiance to the *Khalifah*, the *Khalifah* or the *Amir* then becomes the one who has the right to the rule, or the rule is for the *Khalifah* or the *Amir*. No one else can take the rule unless it was given to them by him, and in this manner the rule is centralised. In other words, the rule is for the *Ummah* to give to a person, *Khalifah* or *Amir*, and by giving them the rule by the pledge of allegiance or by selection or elections, the rule becomes his, and at that time he gives the right to rule to whomever he wishes and no one else has the right to rule unless he gives it to them. Accordingly, it becomes apparent that centralisation of the rule is the restriction of the right to the rule with the one whom the *Ummah* has selected, where he is entitled to the rule automatically. No one else is entitled to the rule automatically; rather they gain it through being granted it by someone else, and are limited with respect to this permission by time, place and situation, and in that case the reality of the ruling indicates that it is centralised and its centralisation is necessary.

As for the actions of the Messenger of Allah ﷺ, he used to send governors to the districts and order them to implement the *Shari'ah* rules upon the people. He also used to appoint civil employees in order to carry out the functions not to implement the laws. So for example he appointed governors and gave them the right to implement the laws and did not restrict the means and styles of implementation but rather left that to them. Some of them would be written letters which would include the *Shari'ah* rules but not the means or style of their implementation and others would be ordered to implement the *Shari'ah* of Allah (swt); so he appointed Amr Bin Hazm as governor and wrote him a letter and he appointed Mu'adh Bin Jabal and he asked him how he would rule, and then he confirmed the correctness of his view. He also appointed 'Itab b. Usayd as a governor in order to implement the *Shari'ah* of Allah (swt), and he used to appoint people as

governors based upon the view of their suitability to execute; it is narrated

«أَنَّ عِمْرَانَ بْنَ الْخُصَّيْنِ اسْتُعْمِلَ عَلَى الصَّدَقَةِ، فَلَمَّا رَجَعَ قِيلَ لَهُ: أَيْنَ الْمَالُ؟ قَالَ: وَلِلْمَالِ أَرْسَلْتَنِي؟ أَخَذْنَاهُ مِنْ حَيْثُ كُنَّا نَأْخُذُهُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ وَوَضَعْنَاهُ حَيْثُ كُنَّا نَضَعُهُ»

“Imran bin Hussain was appointed to collect the Sadaqah (Zakah). When he came back, it was said to him: 'Where is the wealth?' He said: 'Was it for wealth that you sent me? We took it from where we used to take it at the time of the Messenger of Allah ﷺ, and we distributed it where we used to distribute it.’” (reported by Ibn Maja and Al-Hakim that authenticated it).

This is different to the civil employees, since their roles are limited and they do what is requested of them. For example, the Messenger of Allah ﷺ appointed ‘Abd Allah Bin Rawaha as an estimator who would estimate for the Jews; in other words, estimate the yield of crops prior to harvest. It is reported by Ahmad with a *Sahih* chain from Jabir Bin ‘Abd Allah who said,

«أَفَاءَ اللَّهِ عَزَّ وَجَلَّ خَيْبَرَ عَلَى رَسُولِ اللَّهِ ﷺ. فَأَقْرَهُمُ رَسُولُ اللَّهِ ﷺ كَمَا كَانُوا، وَجَعَلَهَا بَيْنَهُ وَبَيْنَهُمْ، فَبَعَثَ عَبْدُ اللَّهِ بْنُ رَوَاحَةَ فَخَرَصَهَا عَلَيْهِمْ ثُمَّ قَالَ لَهُمْ: يَا مَعْشَرَ الْيَهُودِ أَنْتُمْ أَبْغَضُ الْخَلْقِ إِلَيَّ، قَتَلْتُمْ أَنْبِيَاءَ اللَّهِ عَزَّ وَجَلَّ، وَكَذَبْتُمْ عَلَى اللَّهِ، وَلَيْسَ يَحْمِلُنِي بَغْضِي إِلَّاكُمْ عَلَى أَنْ أَحِيفَ عَلَيْكُمْ. قَدْ خَرَصْتُ عَشْرِينَ أَلْفَ وَسْقٍ مِنْ تَمَرٍ فَإِنْ شِئْتُمْ فَلَكُمْ وَإِنْ أَبَيْتُمْ فَلِي. فَقَالُوا: بِهَذَا قَامَتِ السَّمَاوَاتُ وَالْأَرْضُ قَدْ أَخَذْنَا فَاخْرَجُوا عَنَا»

“Allah gave Khaybar to the Messenger of Allah ﷺ as booty. The Messenger of Allah ﷺ confirmed the Jews on

previous crop division between Him and them which was fifty percent for each side. He ﷺ then sent ‘Abd Allah b. Rawaha to assess the division of the crop. When he was finished, he said to them: O Jews, you are among the most hateful to me; you killed the Prophets of Allah, and you lied upon Allah . But it doesn’t prompt me to deal unjustly with you . I have estimated twenty thousand loads of dates, so if you want they are for you, or for me. They said: This is what supports the heavens and the earth, and so we accept it, so leave us”. He ﷺ also used to send collectors for the Zakat who would collect and deliver it to him, and he would pay them their wages, as narrated by Bishr Bin Sa’id Bin Al-Sa’adi Al-Maaliki who said:

«عَنْ بُسْرِ بْنِ سَعِيدٍ عَنِ ابْنِ السَّاعِدِيِّ الْمَالِكِيِّ أَنَّهُ قَالَ: اسْتَعْمَلَنِي عُمَرُ بْنُ الْخَطَّابِ رضي الله عنه عَلَى الصَّدَقَةِ، فَلَمَّا فَرَغْتُ مِنْهَا وَأَدَيْتُهَا إِلَيْهِ أَمَرَ لِي بِعُمَالَةٍ، فَقُلْتُ: إِنَّمَا عَمِلْتُ لِلَّهِ وَأَجْرِي عَلَى اللَّهِ، فَقَالَ: خُذْ مَا أُعْطِيتَ، فَإِنِّي عَمِلْتُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَعَمَلَنِي، فَقُلْتُ مِثْلَ قَوْلِكَ، فَقَالَ لِي رَسُولُ اللَّهِ ﷺ: إِذَا أُعْطِيتَ شَيْئًا مِنْ غَيْرِ أَنْ تَسْأَلَ فَكُلْ وَتَصَدَّقْ»

“Omar b. Khattab (ra) appointed me as a collector of Sadaqa. When I had finished that (the task assigned to me) and I handed over that to him, he commanded me to (accept) some payment (for the work). I said: I performed this duty for Allah and my reward is with Allah. He said: Take whatever has been given to you, for I also performed this duty during the time of the Messenger of Allah ﷺ. He assigned me the task of a collector and I said as you say, and the Messenger of Allah ﷺ said to me: When you are given anything without your begging for it, (then accept it), eat it and give it in charity.” (reported by Muslim).

So ‘Imran b. Husayn disapproved of the ruler requesting the Zakat that he had gathered from him, since he had implemented the law of Allah (saw) and given it to those who had

right over it in the same way he used to at the time he was appointed by the Messenger of Allah (saw), but Busr b. Sa'id was an employee who did what he was assigned to do with respect to collecting the *Zakat* but he did not undertake the implementation of the *Shari'ah* rules. Accordingly the difference between the actions of the ruler and the actions of the civil employee has been made clear. So the actions of the ruler are the implementation of the *Shari'ah*, in other words, the rule, power and authority, and the actions of the civil employees are to undertake the actions and not the implementation of the laws, and so they are not from the rule but rather they are only part of the administration.

In addition, the difference between the actions of the ruler himself have become clear, since amongst them is the rule which is the implementation of the *Shari'ah* rules and the implementation of the judgements, and no one has the right to do these actions except for the one who is appointed with the right to rule according to the position given. And amongst the actions of the ruler are the styles and means used in order to achieve the implementation, and these are part of the administration, and these do not have to be defined for the ruler and he does not need to refer back to those who appointed him. Rather his appointment as a ruler gives him the right to use the means that he considers and the styles that he wants as long as those who appointed him did not specify specific styles and means for him, in which case he would be obliged by what was specified for him. In other words his appointment as a ruler gives him the right to carry out the administrative actions as long as there are not administrative systems in place originating from those who gave him the right to rule, in which case he would follow those systems.

Consequently, it is clear that the meaning of centralised rule is the carrying out of the authority, in other words, of the implementation of the *Shari'ah*, and no one possesses that authority unless he was given it by the *Ummah* and so it is restricted to him and is exercised by whoever he gives it to. The meaning of decentralised administration is that the ruler who has

been appointed does not have to refer to those who appointed him in the issues of administration; rather he carries them out according to his opinion. And that is established from the reality of the rule as has been mentioned in the *Shari'ah* texts, and from the actions of the Messenger ﷺ in appointing the rulers.

This is the evidence for this article.

Article 18

There are four types of rulers: the *Khalifah*, the delegated assistant, the governor, and the worker (*'amil*), and whoever falls under the same rule. As for anyone else, they are not considered rulers, but rather employees.

The ruler in the article is the one holding authority who is responsible for governing the affairs, irrespective of whether the governance was for the whole State or for a part of it. Through deduction from the *Shari'ah* rules, the ones who are made responsible for governing the affairs, establishing the laws and are to be obeyed with respect to their implementation of the laws are these four: the *Khalifah*, the assistant (delegate minister), the governor, and the *Amil*; and they are to be obeyed due to their position of rule.

With regards to the *Khalifah*, he is the man who is given the pledge by the *Ummah* (nation) to establish the *Deen* (religion) as their representative, and so he establishes the *hudud*, implements the laws, and carries out the *Jihad*, and he is owed obedience:

«وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفَقَةً يَدِهِ وَتَمَرَةً قَلْبِهِ فَلْيُطِيعْهُ إِنْ اسْتَطَاعَ، فَإِنْ جَاءَ آخَرُ يُنَازِعُهُ فَاضْرِبُوا عُنُقَ الْآخَرِ»

“He who swears allegiance to a Caliph should give him the grasp of his hand and the sincerity of his heart (i. e. submit

to him both outwardly as well as inwardly). He should obey him to the best of his capacity. If another man comes forward (as a claimant to Caliphate), disputing his authority, they (the Muslims) should behead the latter.” (reported by Muslim through ‘Abd Allah b. Amr b. Al-‘As).

As for the delegate minister, he is the assistant who assists the *Khalifah* in running the governing of the affairs; in other words, the general, continuous binding governorship. The evidence for this is that he is the one in a position of rule who must be obeyed in the issues that the *Khalifah* charged him with or requested him to assist him in carrying out the affairs. Ahmad reported with a good chain from 'Aisha (ra) that she said: the Messenger of Allah ﷺ said,

"مَنْ وَلَّاهُ اللَّهُ عَزَّ وَجَلَّ مِنْ أَمْرِ الْمُسْلِمِينَ شَيْئًا فَأَرَادَ بِهِ خَيْرًا جَعَلَ لَهُ وَزِيرًا صِدْقًا، فَإِنْ نَسِيَ ذِكْرَهُ، وَإِنْ ذَكَرَ أَعَانَهُ"

“ When Allah (swt) appoints a governor over Muslims, and desire good for him (this ruler), Allah (swt) appoints a sincere minister (assistant) to him who will remind him if he forgets and helps him if he remembers.”

As for the governor, he is the man who the *Khalifah* gives authority to over one of the governorates of the State. The evidence that he is in a position of ruling who must be obeyed is what is reported by Muslim from Auf Bin Malik Al-Ashja'i who said that he heard the Messenger of Allah ﷺ say

"... أَلَا مَنْ وَلِيَ عَلَيْهِ وَالٍ فَرَأَاهُ يَأْتِي شَيْئًا مِنْ مَعْصِيَةِ اللَّهِ، فَلْيُكْرِهْ مَا يَأْتِي مِنْ مَعْصِيَةِ اللَّهِ، وَلَا يَنْزِعَنَّ يَدًا مِنْ طَاعَةٍ"

“...mind you! One who has a governor appointed over him and he finds that the governor indulges in an act of disobedience to Allah, he should condemn his act, in disobedience to Allah, but should not withdraw himself from his obedience.”

"... إِذَا رَأَيْتُمْ مِنْ وُلَايَتِكُمْ شَيْئًا تَكْرَهُونَهُ، فَاكْرَهُوا عَمَلَهُ، وَلَا تَنْزِعُوا يَدًا مِنْ

طَاعَةٍ"

As for the 'Amil he is the one who the *Khalifah* puts in charge of, or his representative, a village, town or part of a governorate. His work is like that of the governor except that he is ruling over a part of the governorate and not the whole of it and accordingly he is a ruler who must be obeyed like the governor, because he is a leader coming either from the *Khalifah* or the governor. Al-Bukhari reported from Anas b. Malik who said that the Messenger of Allah ﷺ said

"اسْمَعُوا وَأَطِيعُوا وَإِنْ اسْتُعْمِلَ عَلَيْكُمْ عَبْدٌ حَبَشِيٌّ كَانَ رَأْسُهُ زَبِيَّةً"

"Listen and obey even if an Ethiopian whose head is like a raisin where made your ruler". Muslim reported from Umm Al-Husayn who said that she heard the Prophet ﷺ give a sermon in the farewell pilgrimage where he said

"وَلَوْ اسْتُعْمِلَ عَلَيْكُمْ عَبْدٌ يَفُودُكُمْ بِكِتَابِ اللَّهِ فَاسْمَعُوا لَهُ وَأَطِيعُوا"

"and even if a slave who leads you by the book of Allah is appointed over you, listen to him and obey".

With respect to the expression "and whoever falls under the same rule", this means the *Madhalim* judge and the judge of judges if he is given the authority to appoint and remove the *Madhalim* judge, as well as the powers of the judges in *Madhalim*, since the judge of *Madhalim* is from the rule as is the subject of article 78.

Article 19

It is not permitted for anyone to be in charge of ruling or any action considered to be from the ruling unless they are male, free, adult, sane, just, capable of carrying out the

responsibility, and it is not permitted for anyone other than a Muslim.

Allah (swt) has decisively prohibited for a disbeliever to be a ruler over the Muslims, as Allah (swt) says

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

“And never will Allah give the disbelievers over the believers a way [to overcome them].” (TMQ 4:141), and to make the disbeliever a ruler over the Muslims is to grant him a way over them, and Allah (swt) categorically forbade that through His (swt) use of the letter “never” which is an indication that the prohibition of the disbeliever having a way over the Muslims, in other words, for the disbeliever to be a ruler over them, is a decisive prohibition and so it conveys that it has been made *Haram*. Additionally, Allah (swt) made it a condition that the witness for the return to one’s wife after divorce has to be Muslim; Allah (swt) says

﴿فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهَدُوا

ذَوَى عَدْلٍ مِّنكُمْ﴾

“And when they have [nearly] fulfilled their term, either retain them according to acceptable terms or part with them according to acceptable terms. And bring to witness two just men from among you.” (TMQ 65:2), and the understanding taken is not to take from other than among you. Also, the witness in debts has to be a Muslim; Allah (swt) says

﴿وَأَسْتَشْهَدُوا شَهِيدَيْنِ مِّن رِّجَالِكُمْ﴾

“And bring to witness two witnesses from among your men.” (TMQ 2:282); in other words, not from men other than

yours. So if a condition for witness in these two issues is that they must be Muslim, then by greater reasoning it is a condition for the ruler to be Muslim. Also, ruling is the implementation of the *Shari'ah* rules and the judgments of the judiciary, and they are ordered to judge according to the *Shari'ah*, so accordingly it is a condition that they are Muslim. The rulers are those who are charged with authority, and when Allah (swt) ordered the obedience to them and that issues related to security and fear be referred to them, it is made a condition that those charged with authority must be Muslims; Allah (swt) says

﴿أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ﴾

“O you who have believed, obey Allah and obey the Messenger and those in authority among you.” (TMQ 4:59) and

﴿وَإِذَا جَاءَهُمْ أَمْرٌ مِنَ الْأَمْنِ أَوْ الْخَوْفِ أَذَاعُوا بِهِ وَلَوْ رَدُّوهُ إِلَى

الرَّسُولِ وَالْإِلَى أُولِيَ الْأَمْرِ مِنْهُمْ﴾

“And when there comes to them information about [public] security or fear, they spread it around. But if they had referred it back to the Messenger or to those of authority among them.” (TMQ 4:83). He (swt) said *“from you”* in other words, not from other than you, and *“among them”* in other words, not from other than them. These verses indicate that it is a prerequisite that the one who has authority must be Muslim.

The fact that the Quran did not mention the one in authority except that it was accompanied with a mention that they were Muslims confirms that it is a prerequisite for the ruler to be Muslim. Also, the ruler has complete obedience from the Muslims and the Muslim is not charged with obeying the disbeliever, since he is commanded by the text only to obey the Muslim who holds the authority; Allah (swt) says

﴿أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ﴾

“O you who have believed, obey Allah and obey the Messenger and those in authority among you.” (TMQ 4:59), so the fact that it was ordered to obey those in authority from the Muslims and not other than them is another indication that it is not obligatory to obey the disbeliever who has authority and there is no ruler without obedience. It cannot be argued that the Muslim is charged with obeying the department manager if they were a disbeliever, since he is not a person of authority but rather he is a civil employee, so obedience to him is due to the command of the person of authority to obey the department manager, and the discussion is about the obedience to one of authority and not the employee. Due to this it would not be correct for someone to be in authority over the Muslims unless he is Muslim, and it is not correct for him to be a disbeliever, so accordingly it is absolutely not permitted for the ruler to be a disbeliever.

As for the condition that the ruler be male, it is due to what was narrated by Abu Bakrah saying ***“When the Messenger of Allah ﷺ was informed that the daughter of Kisra had been given the reign over the Persians he said:***

«لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ»

“Never will succeed such a nation that makes a woman their” (reported by Al-Bukhari). The notification of the Prophet ﷺ of the negation of success for whoever commissions a woman in authority over them is a prohibition of her assignment, since it is from the forms of request. And the fact that this notification came as a censure is an indication that the prohibition is decisive, and accordingly commissioning a woman to the ruling is *Haram* (forbidden) and it is from this evidence that this condition of ruling is derived.

As for the condition that the ruler be just, this is because Allah (swt) made it a prerequisite that the witness be just; Allah (swt) says

﴿وَأَشْهِدُوا ذَوَىٰ عَدْلٍ مِّنكُمْ﴾

“**And bring to witness two just men from among you.**” (TMQ 65:2), and so the one who is more significant than the witness, such as the ruler, must by greater reasoning also be just. That is because if the just character has been made a condition for the witness then for it to be a condition for the ruler is of a higher priority.

As for the condition of being free, that is because the slave does not possess the independence of conduct for himself, so how can he undertake the governing of other peoples’ affairs. Also, the issue of being enslaved means that the time of the slave belongs to his master.

As for the condition of being an adult, this is because it is not permitted for the ruler to be a child, due to what was reported by Abu Dawud from ‘Ali Bin Abi Talib (ra) who said that the Messenger of Allah ﷺ said,

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الصَّبِيِّ حَتَّى يَبْلُغَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الْمَعْتُوهِ حَتَّى يَبْرَأَ»

“***The Pen has been lifted from three (their actions are not recorded): A boy till he reaches puberty, a sleeper till he awakes, a lunatic till he is restored to reason.***”, and it come with another wording

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ الْمَجْنُونِ الْمَغْلُوبِ عَلَى عَقْلِهِ حَتَّى يَفِيقَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ»

“***There are three whose actions are not recorded: a lunatic whose mind is deranged till he restored to***

consciousness, a sleeper till he awakes, and a boy till he reaches puberty.” And the pen being raised means that it is not correct that he acts independently in his affairs, and he is not responsible according to the *Shari’ah*, and so accordingly it is not correct that he could be the *Khalifah* or anything else below him from the positions of ruling since he does not possess the right to act independently. Another evidence for the absence of permission for a child to be the *Khalifah* is what has been reported in Al-Bukhari

«عن أبي عقيل زهرة بن معبد عن جده عبد الله بن هشام، وكان قد أدرك النبي ﷺ وذهبت به أمه زينب بنت حميد إلى رسول الله ﷺ فقالت: يا رسول الله، بايعه، فقال النبي ﷺ: هو صغير. فمسح رأسه ودعا له...»

“from Abi Aqil Zuhra Bin Ma’bad, from his grandfather ‘Abd Allah Bin Hisham, who was born during the lifetime of the Prophet ﷺ that his mother, Zainab bint Humaid has taken him to Allah’s Prophe t ﷺ and said, “O Allah’s Prophet! Take his pledge and allegiance (for Islam). The Prophet ﷺ said, “He (Abdullah bin Hisham) is a little child,” and passed his hand over his head and invoked Allah for him...” Therefore, if the pledge of a child is not necessary and he is not obliged to give the pledge to the *Khalifah*, then by greater reasoning it is not permitted for him to be the *Khalifah*.

With respect to the condition of being sane, this is because it is not correct for him to be insane, due to the words of the Messenger of Allah ﷺ

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ»

“The pen has been lifted from three (their actions are not recorded)” in which he mentioned

«الْمَجْنُونِ الْمَغْلُوبِ عَلَى عَقْلِهِ حَتَّى يَفِيقَ»

“a lunatic whose mind is deranged till he restored to consciousness”. From the meaning of the raising of the pen is that he is not responsible, since rationality is the focus of responsibility and a condition for the correctness of any transactions. The actions of the *Khalifah* are with regards to the law and implementing the *Shari’ah* injunctions, and so it would not be correct for him to be insane since it is not correct for the insane person to act independently with regards to his own affairs, so ,therefore, by greater reasoning it stands that it would not be correct for him to have authority over the people’s affairs.

As for the condition that he should be capable of carrying out the responsibility, this is from what is necessitated from the pledge with respect to the *Khalifah* and necessitated from the contract of appointment of anyone other than the *Khalifah* from the assistants and governors and workers (*‘Ummal*), since the one who is incapable is not capable of upholding the affairs of the subjects by the Book and the *Sunnah* which he had given the pledge upon or agreed upon according to the contract of appointment.

From the various evidences to prove this:

1 – Muslim reported from Abu Dharr who said

«قُلْتُ: يَا رَسُولَ اللَّهِ، أَلَا تَسْتَعْمِلُنِي؟ قَالَ: فَضَرَبَ بِيَدِهِ عَلَى مَنْكِبِي ثُمَّ قَالَ: يَا أَبَا ذَرٍّ، إِنَّكَ ضَعِيفٌ، وَإِنَّهَا أَمَانَةٌ، وَإِنَّهَا يَوْمَ الْقِيَامَةِ خَزْيٌ وَنَدَامَةٌ، إِلَّا مَنْ أَخَذَهَا بِحَقِّهَا وَأَدَّى الَّذِي عَلَيْهِ فِيهَا»

“I said: O Messenger of Allah, Why don’t you appoint me (to an official position)? He ﷺ patted me on the shoulder with his hand and said, “O Abu Dharr, you are a weak man and it is a trust and it will be a cause of disgrace and remorse on the Day of Resurrection except for one who takes it up with a full sense of responsibility and fulfils what is entrusted to him (discharges its obligations efficiently.)”

So this explains the issue by taking it by its right and performing what is upon him from it; in other words, to be capable of it, and the indication which is decisive is that the Messenger ﷺ said who takes it and is not capable –

«وَأَنَّهَا يَوْمَ الْقِيَامَةِ خِزْيٌ وَنَدَامَةٌ، إِلَّا مَنْ أَخَذَهَا ...»

“it will be a cause of disgrace and remorse on the Day of Resurrection except for one who takes it up with a full ...”.

2 – Al-Bukhari reported from Abu Hurayrah that the Messenger ﷺ said

«إِذَا ضُيِّعَتِ الْأَمَانَةُ فَانْتَظِرِ السَّاعَةَ. قَالَ: كَيْفَ إِصَاعَتُهَا يَا رَسُولَ اللَّهِ؟
قَالَ: إِذَا أُسْنِدَ الْأَمْرُ إِلَى غَيْرِ أَهْلِهِ فَانْتَظِرِ السَّاعَةَ»

“When trust (honesty) is lost, then wait for the Hour. It was asked, “How will trust (honesty) be lost, O, Allah’s Prophet?” He said, “When authority is given to those who not deserve it, then wait for the Hour.”

So this narration indicates the decisive prohibition for the responsibility to be placed with those who are incapable. The decisive indication (*Qarina*) is wasting the trust and it is from the signs of the Day of Judgement; all this to indicate the great sin for the responsibility to be entrusted to whoever is not capable to fulfil it.

As for how the capability should be defined, this requires examination since it could be connected to bodily or mental illness etc., and for that reason it is left undefined for the *Madhalim* court to confirm that, for example, the candidates for the *Khalifah* fulfil the necessary requirements.

Article 20

Accounting of the rulers by Muslims is one of their rights and an obligation of sufficiency upon them. The non-Muslim

subjects have the right to voice complaint regarding the ruler's injustice towards them or misapplication of the rules of Islam upon them.

When the ruler is appointed upon the people in order to rule them he has only been appointed to govern their affairs, so if he falls short in this governing then accounting him becomes necessary. Although his accounting lies with Allah (swt) and the recompense of his fault or negligence is punishment (from Allah (swt)), Allah (swt) gave the Muslims the right to account the ruler and made this accounting an obligation of sufficiency upon them, giving the *Ummah* the guardianship over the ruler's execution of his responsibilities. It has been made binding upon the *Ummah* to rebuke the ruler if he is faulty in these responsibilities or displays evil conduct; Muslim narrated from Umm Salamah that the Messenger of Allah ﷺ said

«سَتَكُونُ أُمَرَاءُ فَتَعْرِفُونَ وَتُنْكِرُونَ، فَمَنْ عَرَفَ بَرِيءٌ، وَمَنْ أَنْكَرَ سَلِمَ، وَلَكِنْ

مَنْ رَضِيَ وَتَابَعَ»

“There will be Amirs (rulers) and you will like their good deeds and dislike their bad deeds. One who sees through their deeds (and tries to prevent their repetition), is absolved from blame, and one who hates their bad deeds (in their hearts, being unable to prevent their recurrence), is (also) safe. But one who approves of their bad deeds and imitates them is spiritually ruined”; in other words, the one who knows the evil and so he changes it and whoever is not capable of changing it rejects it in his heart and so he is safe. Accordingly, it is obligatory upon the Muslims to account the ruler in order to change what he is upon and they would be sinful if they were content with and followed the actions of the ruler that are blameworthy.

As for the non-Muslims, they have the right to raise complaints regarding oppression of the ruler due to the narrations about the absolute prohibition of oppression irrespective of

whether it was upon the Muslims or non-Muslims and due to the narrations regarding the prohibition of harming the people of *Dhimma*; the Messenger of Allah ﷺ said

«أَلَا مَنْ ظَلَمَ مِعَاهِدًا، أَوْ انْتَقَصَهُ، أَوْ كَلَّفَهُ فَوْقَ طَاقَتِهِ، أَوْ أَخَذَ مِنْهُ شَيْئًا بَغَيْرِ طِيبِ نَفْسٍ، فَأَنَا حَاجِبُهُ يَوْمَ الْقِيَامَةِ»

“Whoever wrongs (oppresses) a contracting man (someone with a covenant) , or diminishes his right, or forces him to work beyond capacity, or take from him anything without his consent, I shall plead for on the Day of Judgement” (Reported by Abu Dawud and Al-‘Iraqi said the chain was good). This is a definitive prohibition on harming the one with a covenant and by greater reasoning this applies to the people of *Dhimma*. Also due to the prohibition of specific types of harm and similar to them are all harms; Abu Dawud narrated through Ibn ‘Abbas from the Prophet ﷺ in the narration regarding the agreement with the people of Najran,

«عَلَى أَنْ لَا تُهْدَمَ لَهُمْ بَيْعَةٌ، وَلَا يُخْرَجَ لَهُمْ قَسٌّ، وَلَا يُفْتَنُوا عَنْ دِينِهِمْ، مَا لَمْ يُحْدِثُوا حَدَثًا أَوْ يَأْكُلُوا الرِّبَا»

“no church of theirs will be demolished and no clergyman of theirs will be turned out. There will be no interruption in their religion (will not coerced away from their religion) until they introduce something that does not belong to Islam, or take usury.” If a *Dhimmi* is oppressed or afflicted by harm from the ruler, he has the right to raise his complaints until the oppression is lifted from him and the one who oppressed him is punished. The complaint from him is heard in every case irrespective of whether he was justified in his complaint or not.

In the book *Al-Amwal* by Ibn Abi ‘l-Dunya with a *Sahih* chain to Sa’id Ibn Al-Musayyib, as also said by Al-Hafiz in the introduction of *Al-Fateh*, when Abu Bakr (ra) spoke to a Jew

known as Fenhaas inviting him to Islam, Fenhaas replied to him saying

"والله يا أبا بكر ما بنا إلى الله من فقر وإنه إلينا لفقير، وما نتضرع إليه كما يتضرع إلينا، وإنا عنه أغنياء وما هو عنا بغني، ولو كان غنياً ما استقرضنا أموالنا كما يزعم صاحبكم، ينهاكم عن الربا ويعطيناه، ولو كان عنا غنياً ما أعطانا"

“By Allah O Abu Bakr, we have no need of Allah and He is needy to us, and we do not implore Him the way He implores us, and we are not in need of Him and He is not able to dispense with us, and if He were not poor , He would not ask for a loan from our property as your companion claims; forbidding you from usury (interest) and giving it to us, and if He were rich, he would not give us.” So Fenhaas was alluding to His (swt) words

﴿مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ أَضْعَافًا

كَثِيرَةً﴾

“Who is it that would loan Allah a goodly loan so He may multiply it for him many times over?” (TMQ 2:245), but Abu Bakr was unable to have patience over this reply and so became angry and hit Fenhaas in the face with a powerful strike, and said *“By the One who my soul is in His Hand, if there were not a covenant between us and you, I would struck your head, O enemy of Allah”*. So Fenhaas then complained about Abu Bakr (ra) to the Messenger of Allah ﷺ, and the Prophet ﷺ listened to his complaint and asked Abu Bakr (ra), and so Abu Bakr (ra) told him what was said to him. When Fenhaas was asked about this he denied what he had said to Abu Bakr about Allah (swt), and so His (swt) words

﴿لَقَدْ سَمِعَ اللَّهُ قَوْلَ الَّذِينَ قَالُوا إِنَّ اللَّهَ فَقِيرٌ وَحُمُ أَعْيَاءُ سَنَكْتُبُ

مَا قَالُوا وَقَتْلَهُمُ الْأَنْبِيَاءَ بِغَيْرِ حَقٍّ وَنَقُولُ ذُوقُوا عَذَابَ الْحَرِيقِ﴾

“Allah has certainly heard the statement of those [Jews] who said, "Indeed, Allah is poor, while we are rich." We will record what they said and their killing of the Prophets without right and will say, "Taste the punishment of the Burning Fire. ” (TMQ 3:181) were revealed. The cause for the revelation of this verse is mentioned by Ibn Abi Hatim and Ibn Al-Munthir with a good chain from Ibn Abbas as mentioned by Al-Hafiz in *Al-fath*. And it is well known that Abu Bakr (ra) was a *Wazir* (minister) of the Messenger ﷺ, in other words, an assistant, and so he was a ruler, and Fenhaas was a covenanter, and the Messenger ﷺ heard the complaint from the covenanter, and so by greater reasoning it must be heard from the *Dhimmi*, and on top of that he has been given the covenant of *Dhimmah*.

As for complaints regarding the misapplication of the implementation of the rules of Islam upon them, then this is from the rights of the Muslims and non-Muslims; some Muslims complained to the Messenger ﷺ about Mu'ath Bin Jabal lengthening the recitation in prayer – Al-Bukhari reported from Jabir Bin ‘Abd Allah who said,

«أَقْبَلَ رَجُلٌ بَنَاضِحِينَ وَقَدْ جَنَحَ اللَّيْلُ، فَوَافَقَ مُعَاذًا يُصَلِّي، فَتَرَكَ نَاضِحَهُ وَأَقْبَلَ إِلَى مُعَاذٍ، فَقَرَأَ بِسُورَةِ الْبَقَرَةِ أَوْ النَّسَاءِ، فَانْطَلَقَ الرَّجُلُ – وَبَلَغَهُ أَنَّ مُعَاذًا نَالَ مِنْهُ – فَأَتَى النَّبِيَّ ﷺ فَشَكَا إِلَيْهِ مُعَاذًا، فَقَالَ النَّبِيُّ ﷺ: يَا مُعَاذُ أَفَتَانِ أَنْتَ؟! أَوْ أَفَاتِنِ؟! ثَلَاثَ مَرَارٍ، فَلَوْلَا صَلَّيْتَ بِسَبْحِ اسْمِ رَبِّكَ، وَالشَّمْسِ وَضَحَاها، وَاللَّيْلِ إِذَا يَغْشَى، فَإِنَّهُ يُصَلِّي وَرَاءَكَ الْكَبِيرُ وَالضَّعِيفُ وَذُو الْحَاجَةِ»

“Once a man was driving two *Nadihas* (camels used for agricultural purposes) and night had fallen. He found Mu`adh praying so he made his camel kneel and joined Mu`adh in the

prayer. The latter recited Surat 'Al-Baqara' or Surat 'An-Nisa', (so) the man left the prayer and went away. When he came to know that Mu`adh had criticized him, he went to the Prophet ﷺ, and complained against Mu`adh. The Prophet ﷺ said thrice, "O Mu`adh ! Are you putting the people to trial?" It would have been better if you had recited "Sabbih Isma Rabbika-l-A`la (87)", Wash-Shamsi Wa Duhaha (91)", or "Wal-Laili Idha Yaghsha (92)", for the old, the weak and the needy pray behind you." And so the Messenger ﷺ listened to the complaint about Mu`adh and chastised him such that he even said to him

«أَفْتَانُ أَنْتَ؟ ثَلَاثَ مَرَّاتٍ»

"O Mu`adh ! Are you putting the people to trial?" three times, and Mu`ath was the governor over Yemen and was the *Imam* of his people. This event has a number of narrations so irrespective of whether the complaint was regarding him and he was in Yemen or he was the *Imam* of his people, it is a complaint regarding someone who had been appointed by the Messenger ﷺ, so it is a complaint about the ruler, and regarding the implementation of the *Shari'ah* rules, since the *Shari'ah* rule is that the *Imam* should lighten the prayer due to the words of the Messenger ﷺ

«إِذَا أَمَّ أَحَدُكُمْ النَّاسَ فَلْيُخَفِّفْ»

"When any one of you leads the people in prayer, he should be brief." (agreed upon with this wording from Muslim). So it was a complaint about the poor application of the rules of Islam.

In the same way that a complaint from the Muslim regarding prayer is listened to, any complaint regarding all other rules are also listened to and not prayer alone, since the misapplication of the *Shari'ah* rules is considered to be an act of injustice. Accordingly the complaint is a right for the Muslim and *Dhimmi*, since the Messenger ﷺ said

«وَإِنِّي لَأَرْجُو أَنْ أَلْقَى رَبِّي وَلَيْسَ أَحَدٌ مِنْكُمْ يَطْلُبُنِي بِمَظْلَمَةٍ»

“I hope that I meet my Lord and non of you are seeking (recompense from) me for an injustice.” (reported by Al-Tirmidhi who said the narration is *Hasan Sahih*). The word “one” in the narration encompasses the Muslim and the *Dhimmi*, since he did not say

«وَلَيْسَ أَحَدٌ مِنْكُمْ يَطْلُبُنِي»

“and no Muslim is seeking me”, but rather he said ***“and no one is seeking me”***.

All of this is the evidence for the article.

Article 21

The Muslims have the right to establish political parties in order to account the rulers or to reach the rule through the *Ummah* on the condition that their basis is the Islamic 'Aqeedah and that the rules they adopt are *Shari'ah* rules. The formation of a party does not require any permission. Any group formed on an un-Islamic basis is prohibited.

Its evidence is the words of Allah (swt)

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ

الْمُنْكَرِ ۚ وَأُولَٰئِكَ هُمُ الْمُفْلِحُونَ ﴿١٠٤﴾﴾

“And let there be [arising] from you a nation (a band of people) inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successfu.” (TMQ 3:104). The angle of using this verse as an evidence for the establishment of political parties is that Allah (swt) ordered the Muslims to have a group which carries out the

Da'wah to Islam amongst them, and likewise carries out enjoining the *Ma'ruf* and forbidding the *Munkar*, so His (swt) saying

﴿وَلْتَكُن مِّنكُمْ أُمَّةٌ﴾

“Let there be [arising] from you a nation (a band of people).” is an order to create a structured group which has the characteristic of the group from amongst the groups of Muslims, since He (swt) said **“from you”**, and the intention of His (swt) words

﴿وَلْتَكُن مِّنكُمْ﴾

“Let there arise from you” is to let a group from the Muslims rise and not that the Muslims be a group; in other words, let their arise from the Muslims an *Ummah*, and the meaning is not that the Muslims should be an *Ummah*.

This is because the word **“from”** (*Min*) in the verse is for partitioning (*Tab'id*) and not for clarifying the genus, and the way to check is that the word “some” (*Ba'd*) should be able to replace it, so it can be said **“Let there be [arising] from you a nation (a band of people).”**, whereas the word *Min* cannot be replaced with “some” in the verse

﴿وَعَدَ اللَّهُ الَّذِينَ ءَامَنُوا مِنكُمْ﴾

“Allah has promised those who have believed among you.” (TMQ 24:55), since it cannot be said that *“Allah promised some of those who believed from you”* and so in this case it is for clarifying the genus; in other words, the promise is not restricted to the generation of the companions (may Allah (swt) be pleased with them) but it is for all those who believed and did good actions.

Based upon that, as long as the *from* (*Min*) in the verse is for partitioning, this entails two issues: firstly, that establishing a group from amongst the Muslims is an obligation of sufficiency and not an individual obligation and secondly that the presence of a bloc that has the characteristic of being a group from the Muslims is sufficient for this obligation as long as the number of this bloc is enough such that it retains the characteristic of being a group and as long it is capable of establishing the action required from it in the verse. So the words

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ﴾

“*and let there be arising*” are addressing the whole of the Islamic *Ummah*, but they are exerted over the word *Ummah* – that is, the group; in other words, the request is asked from all the Muslims and the thing that is requested is the creation of a group that has the characteristic of a group, and so the meaning of the verse is bring about O Muslims a group which will carry out two actions: the first of them that it will call to the good and the second that it will enjoin the *Ma'ruf* and forbid the *Munkar*. So it is a request for the creation of a group and this request has had the action of this group explained.

Although this request is simply an order “*let there be arising*”, however there is an indication which points to it being a decisive request, since the action which the verse explains this group being established for is an obligation upon the Muslims to carry out as is confirmed by other verses and in numerous narrations, and so that is an indication that this request is a decisive request and accordingly the order in the verse is an obligation. Therefore, the verse indicates that it is imperative upon the Muslims to establish a group from amongst themselves that will carry out the *Da'wa* to the good – in other words, to Islam – and will enjoin the *Ma'ruf* and forbid the *Munkar*.

This is from the angle that the establishment of a group that will carry out these two actions mentioned in the verse is

obligatory upon the Muslims and they will all become sinful if this group was not in existence. As for the issue that this group mentioned in the verse to be established is a political party, then the evidence for that is two issues: firstly that Allah (swt) did not request in this verse that the Muslims carry out the *Da'wah* to the good and the enjoining of the *Ma'ruf* and the forbiddance of the *Munkar*; rather it was only requested in the verse to establish a group which will carry the two actions out and so the request is not to carry out the two actions but rather to establish a group that will carry them out, and so the order is exerted over the establishment of a group and not over the two actions. The two actions are the explanation of the work of the group, whose creation is requested, and the two actions are not themselves the issue requested, rather they are the specific characteristics for the type of group whose creation is requested.

In order for this group to be a group which is able to undertake the action in its characteristic as a group, it is imperative that it has specific issues in order to be and remain a group while undertaking the action. In order for the group to gain this characteristic which came in the verse – and that is a group that undertakes the two actions – it is imperative that it possesses what brought it about as a group and keeps it as one while it works. What makes it a group is the presence of a bond that bonds together its members such that they become a single body, i.e. a bloc. Without the presence of this bond the group whose creation is requested, in other words, a group which works according to its characteristic as a group, would not be found. What keeps the group as a group while it is working, is the presence of an *Amir* for it whom obedience to is obligatory. That is because the *Shari'ah* ordered that every group of three and more must appoint an *Amir*; the Messenger ﷺ

«وَلَا يَحِلُّ لِثَلَاثَةٍ نَفَرٍ يَكُونُونَ بِأَرْضٍ فَلَاةٍ إِلَّا أَمَرُوا عَلَيْهِمْ أَحَدَهُمْ»

“It is unlawful for three people in any barren land not to appoint one of them as their leader” (reported by Ahmad

through ‘Abd Allah b. Amr), and because the leaving of obedience removes one from the group; he ﷺ said in an agreed upon narration with this wording from Muslim,

«مَنْ رَأَى مِنْ أَمِيرِهِ شَيْئًا يَكْرَهُهُ فَلْيَصْبِرْ، فَإِنَّهُ مَنْ فَارَقَ الْجَمَاعَةَ شِبْرًا فَمَاتَ فَمِيتَةً جَاهِلِيَّةً»

“One who found in his Amir (ruler) something which he disliked should hold his patience, for one who separated from the main body of the Muslims even to the extent of a handspan and then he died would die the death of one belonging to the days of Jahiliyya.”; so he made going against the Amir a separation from the group. Therefore, the issue that maintains the group while it is working is the obedience to the Amir of the group. And these two characteristics are necessary in order to bring about the group which will carry out the two actions while it is a group, and they are the presence of a bond for the group and the presence of an Amir to whom obedience is obligatory. These two indicate that His (swt) words

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ﴾

“Let there be [arising] from you a nation (a band of people)” means: and bring about from amongst yourselves a group which has a bond which bonds its members together and an Amir to whom obedience is obligatory. And this is the bloc or the party or the association or the organisation or any name from the names which are applied to the group which fulfils what makes it a group and maintains it as group while it is working. And with that it becomes apparent that the verse is an order to form parties, associations, groups or their likes. As for the reality that this order is an order to bring about political parties, that is because the order is a request to bring about a specific group by specifying the action that it will carry out, and not simply any group. The verse explains the action that the group will carry out in its characteristic as a group and this explanation identified the type

of group whose creation was requested; in other words, it identified the type of association whose creation was requested, since the verse mentioned: to bring about from the Muslims a group that calls to the good and enjoins the *Ma'ruf* and forbids the *Munkar*. So this is to be a characteristic for this group, and it is a defined characteristic, so the group that meets this characteristic is the one which is obligatory to be brought about, and anything else is not obligatory. As for the call to the good, or the *Da'wa* to Islam, then it is possible for an group to carry it out, and it is possible for a party or an organisation to carry it out. However, enjoining the *Ma'ruf* and forbidding the *Munkar* which came in a general form, is an action which can only be carried out by a political party, because it encompasses the ordering of the rulers by the *Ma'ruf* and forbidding them from the *Munkar*. In fact, this is the most important action from the enjoining of the *Ma'ruf* and the forbiddance of the *Munkar*, and it is part of this verse, since it came in a general form

﴿وَيَأْمُرُونَ بِالْعُرْفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ﴾

“enjoining what is right and forbidding what is wrong.”, and the *Alif* and *Lam* (‘the’) represent the genus so accordingly it is from the forms of generality. This action is from the most important acts of the political party, and is what grants the political aspect to the party or association or organisation, and makes it a political party or a political association or a political organisation. And since this action, the ordering of the rulers with the *Ma'ruf* and forbidding them from the *Munkar*, is from the most important acts of enjoining the *Ma'ruf* and forbiddance of the *Munkar*, and since the enjoining of the *Ma'ruf* and the forbiddance of the *Munkar* is one of the two requested actions in the verse which are to be the actions of the group which must be created, accordingly the order in the verse is related to a specific group and that is the group whose work is the *Da'wa* to Islam, the ordering of the rulers with the *Ma'ruf* and forbidding them from

the *Munkar*, and ordering the rest of the people likewise with the *Ma'ruf* and forbidding them from the *Munkar*.

This is the group whose establishment Allah (swt) made obligatory upon the Muslims; in other words, it fulfils all of these characteristics found in the verse describing it. The group which has this characteristic is the political party. It cannot be argued that the creation of a group which calls to Islam, and orders the people with the *Ma'ruf* and forbids them from the *Munkar* and does not confront the rulers is sufficient to fulfil this obligation. That cannot be argued since the fulfillment of the obligation does not occur unless the group which the Muslims brought about fulfils all of its characteristics. In other words it fulfils the enjoining of the *Ma'ruf* and the forbiddance of the *Munkar* alongside the *Da'wah* to the good, since the attachment in the verse came with the letter “*and*” (*Wa*) which indicates participation, and because the words to order the *Ma'ruf* and forbid the *Munkar* came in a general meaning with a form from the forms of generality - ,therefore, it has to remain upon its generality and its generality has to be fulfilled. So the obligation cannot be established unless the work of the group in enjoining the *Ma'ruf* and forbidding the *Munkar* was general, as it came in the verse, with no exceptions made. So if the ordering the rulers with *Ma'ruf* and forbidding them from the *Munkar* is excluded, or in other words, if the political actions are excluded, then the group requested in the verse is not present, and this group is not the one requested by the verse because it excluded an important action from the enjoining of the *ma'roof* and the forbiddance of the *Munkar*, and the verse came in its generality and so this characteristic is not complete unless the ordering of the rulers by the *ma'roof* and forbidding them from the *Munkar* is part of the groups actions. For this reason the obligation as mentioned in the verse is not fulfilled except by the establishment of a political group, in other words, a political party or association or organisation; that is, the group which carries out the enjoining of the *Ma'ruf* and forbiddance of the *Munkar* generally without

excluding anything from it, and this is not found except with a political party or association or something that resembles them.

Accordingly, Allah (swt) has ordered in this verse the establishment of political parties which will carry out the work of the Islamic *Da'wa*, and the accounting of the rulers by enjoining them with the *Ma'ruf* and forbidding them from the *Munkar*. This is the angle of deduction from this verse as an evidence for the article.

It cannot be argued that this verse says "*Ummah*", in other words, a single party, and that this means the absence of multiple parties. This cannot be argued because the verse did not say "*One Ummah*", so it did not mention one group but rather it said "*Ummah*" in the unknown form and without any description. That means to establish a group is obligatory. If a single group was established then the obligation has been met, but it does not prohibit the establishment of multiple groups or multiple blocs. The carrying out of the obligation of sufficiency by one in which one is enough to carry it out, does not prohibit other than that one to carry out this obligation. And the word group here is the name of a genus, in other words, the word group is used and what is intended by it is the genus and not the single unit; Allah (swt) said

﴿كُنْتُمْ خَيْرَ أُمَّةٍ﴾

"You are the best nation produced [as an example] for mankind." (TMQ 3:110) and what is intended is the genus. And comparable to that are the words of the Messenger ﷺ

«مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ»

"Whoever from you sees an evil (*munkar*), let him change it" (reported by Muslim through Abu Sa'id Al-Khudri), so the intention is not a single *Munkar* rather the genus of *Munkar*, and there are many similar examples. So it holds true upon the single unit from the genus and also upon multiple units from that genus. It is ,therefore, permitted that a single party

could exist in the *Ummah*, and permitted that several parties could exist, but if a single party is present then the obligation of sufficiency has been met if that party carried out the required actions in the verse. However, this does not prevent the establishment of other parties, since the establishment of the political party is an obligation of sufficiency upon the Muslims, so if one party is established and others want to bring about a second party in other words, to carry out that obligation it is not permitted for them to be prevented, since this is the prevention from carrying out an obligation, which is prohibited. Accordingly, it is not permitted to prevent the establishment of multiple political parties. This only applies to those political parties that are established upon what the verse mentioned; that is the call to the good, the enjoining of the *Ma'ruf* and the prohibiting of the *Munkar* which encompasses the rulers and accounting the rulers. As for anything else, then it has to be considered - if it was established to carry out something prohibited such as the call to nationalism, or to spread un-Islamic ideas, or similar, then the establishment of such blocs is prohibited and will be prevented by the State, with each participant being punished. If they were not established to carry out something prohibited, such as to carry out something permitted, then what is established upon a permitted basis would be permitted. However, it would not be considered establishing the obligation that Allah (swt) obligated in the text of this verse unless it was a political party which had all the characteristics mentioned in the verse.

Since the carrying out of the obligation does not require the permission of the ruler, rather to make the fulfilment of an obligation reliant upon the permission of the ruler is something prohibited, ,therefore, the establishment of political parties and their creation does not require a permit.

Article 22

The ruling system is built upon four principles which are:

- a. Sovereignty is for the *Shar'* rather than for the people**
- b. The authority is for the *Ummah***
- c. To appoint a single *Khalifah* is an obligation upon the Muslims**
- d. The *Khalifah* alone has the right to adopt *Shari'ah* rules, so he is the one who enacts the constitution and the rest of the laws.**

This article explains the basis of the rule, which cannot exist without this basis. If anything from this basis goes then the rule goes. The intention is the Islamic ruling; in other words, the authority of Islam, not any rule. And this basis has been derived after scrutiny of the *Shari'ah* evidences.

The first principle that the sovereignty belongs to the *Shari'ah* has a reality, and that is the word sovereignty, and this word has its indication, and its indication is that it is for the *Shari'ah* and not for the people. As for its reality, that is that this word is a Western definition and what is meant by it is the execution of the wishes and its direction. If the individual was the one who applied his wishes and executed them then the sovereignty would be for him, and if his wishes were executed and controlled by other than him then he would be a slave. If the wishes of the *Ummah* or in other words, if the collective will of its individuals was directed on its behalf by individuals from amongst themselves who were consensually given the right to direct them, then it would be its own master, and if the *Ummah's* will was controlled by others forcefully then it would be enslaved. For this reason the democratic system says: the sovereignty is for the people or in other words, they are the ones who execute their will and establish upon it whomsoever they want and give them the right of directing their will. This is the reality of sovereignty which is intended to apply to the ruling.

As for the rule regarding this sovereignty, it is for the *Shari'ah* and not for the people, since the one who directs the wishes of the individuals according to the *Shari'ah* is not the individual as they themselves wish, but rather the will of the individual is directed by the orders and prohibitions of Allah (swt). And the proof for that are His (swt) words

﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ﴾

“But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves.” (TMQ 4:65), and the words of the Prophet ﷺ

«لَا يُؤْمِنُ أَحَدُكُمْ حَتَّىٰ يَكُونَ هَوَاهُ تَبَعًا لِمَا جِئْتُ بِهِ»

“None of you [truly] believe until his desires are subservient to that which I have brought.” (reported by Ibn Abi ‘Asim in *Al-Sunna*). Al-Nawawi said after reporting the narration from ‘Abd Allah b. Amr b. Al-‘As in *Al-Arba’in* that it is a *Sahih Hasan* narration. So what reigns in the *Ummah* and the individual and directs the will of the *Ummah* and the individual, is what the Messenger ﷺ came with. So the *Ummah* and the individual submit to the *Shari'ah* and accordingly the sovereignty is for the *Shari'ah*. Due to this the *Khalifah* is not contracted by the *Ummah* as a servant of theirs to implement what they want, as is the case in the democratic system, but rather the *Khalifah* is contracted by the *Ummah* upon the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ, to implement the Book of Allah (swt) and the *Sunnah*; in other words, to implement the *Shari'ah* and not whatever the people may want, to the point that if the people who contracted him go against the *Shari'ah* they are fought against until they desist. Consequently, the evidence was derived for the principle that the sovereignty is for the *Shari'ah* not the people.

As for the second principle - the authority is for the people - it is taken from the fact that the *Shari'ah* made the appointment of the *Khalifah* by the *Ummah* and the *Khalifah* takes his authority from this contract. As for the fact that the *Shari'ah* made the appointment of the *Khalifah* to be by the *Ummah* – this is clear from the narrations regarding the pledge of allegiance. It is narrated from ‘Ubadah b. Samit who said

«بَايَعْنَا رَسُولَ اللَّهِ ﷺ عَلَى السَّمْعِ وَالطَّاعَةِ فِي الْمَنْشُطِ وَالْمَكْرَهِ»

“We gave the pledge of allegiance to the Messenger of Allah ﷺ that we listen and obey in whatever was pleasing and hateful to us” (agreed upon), and from Jarir Bin ‘Abd Allah who said

«بَايَعْتُ النَّبِيَّ ﷺ عَلَى السَّمْعِ وَالطَّاعَةِ»

“We gave the pledge of allegiance to the Messenger of Allah ﷺ to listen and obey” (agreed upon), and from Abu Hurayrah that the Messenger of Allah ﷺ said,

«ثَلَاثَةٌ لَا يُكَلِّمُهُمُ اللَّهُ يَوْمَ الْقِيَامَةِ وَلَا يُزَكِّيهِمْ وَلَهُمْ عَذَابٌ أَلِيمٌ: رَجُلٌ عَلَى فَضْلِ مَاءٍ بِالطَّرِيقِ يَمْنَعُ مِنْهُ ابْنُ السَّبِيلِ، وَرَجُلٌ بَايَعَ إِمَامًا لَا يُبَايِعُهُ إِلَّا لِدُنْيَاهُ إِنْ أُعْطَاهُ مَا يُرِيدُ وَفَى لَهُ وَإِلَّا لَمْ يَفِ لَهُ، وَرَجُلٌ يُبَايِعُ رَجُلًا بِسَلْعَةٍ بَعْدَ الْعَصْرِ فَحَلَفَ بِاللَّهِ لَقَدْ أُعْطِيَ بِهَا كَذًا وَكَذَا فَصَدَّقَهُ فَأَخَذَهَا وَلَمْ يُعْطَ بِهَا»

“There are three persons whom Allah will neither talk to nor look at, nor purify from (the sins), and they will have a painful punishment. (They are): (1) A man possessed superfluous water on a way and he withheld it from the travelers. (2) a man who gives a pledge of allegiance to a Muslim ruler and gives it only for worldly gains. If the ruler gives him what he wants, he remains obedient to It, otherwise he does not abide by it, and (3) a man bargains with another man after the `Asr prayer and the latter takes a false oath in the

Name of Allah claiming that he has been offered so much for the thing, and the former (believes him and) buys it.” (agreed upon). Accordingly, the pledge is from the side of the Muslims to the *Khalifah* and not from the *Khalifah* to the Muslims, and so they are the ones who give him the pledge or establish him as a ruler upon them, and what occurred with the rightly guided *Khulafaa*’ is that they only took the pledge of the allegiance from the *Ummah* and they did not become *Khulafaa*’ except by the pledge of the *Ummah* with them.

As for the effect that the *Khalifah* takes the authority from this pledge, then this is clear from the narrations of obedience and in the narrations about the unity of the *Khalifah*. ‘Abd Allah Bin Amr b. Al-‘As said that he heard the Messenger of Allah ﷺ say,

«وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفَقَةً يَدِهِ وَثَمَرَةً قَلْبِهِ فَلْيُطِئْهُ إِنْ اسْتَطَاعَ، فَإِنْ جَاءَ آخَرُ يُنَازِعُهُ، فَاضْرِبُوا عُقُقَ الْآخِرِ»

“He who swears allegiance to a Caliph should give him the grasp of his hand and the sincerity of his heart (i. e. submit to him both outwardly as well as inwardly). He should obey him to the best of his capacity. If another man comes forward (as a claimant to Caliphate), disputing his authority, they (the Muslims) should behead the latter.” (reported by Muslim, and from Nafi’),

«مَنْ خَلَعَ يَدًا مِنْ طَاعَةِ لَقِيَّ اللَّهُ يَوْمَ الْقِيَامَةِ لَا حُجَّةَ لَهُ، وَمَنْ مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً»

“One who withdraws his hand from obedience (to the Amir) will find no argument (in his defense) when he stands before Allah on the Day of Resurrection; and one who dies without having sworn allegiance will die the death of one belonging to the Days of Ignorance (Jahilliyah)” (reported by Muslim), and from Ibn Abbas that the Messenger of Allah ﷺ said,

«مَنْ كَرِهَ مِنْ أَمِيرِهِ شَيْئًا فَلْيَصْبرْ عَلَيْهِ، فَإِنَّهُ لَيْسَ أَحَدٌ مِنَ النَّاسِ خَرَجَ مِنَ السُّلْطَانِ شِبْرًا فَمَاتَ عَلَيْهِ إِلَّا مَاتَ مِيتَةً جَاهِلِيَّةً»

“One who found in his Amir something which he disliked should hold his patience, for one who separated from the main body of the Muslims even to the extent of a handspan and then he died would die the death of one belonging to the days of Jahiliyya” (agreed upon). Abu Hurayrah narrated that the Prophet ﷺ said,

«كَانَتْ بَنُو إِسْرَائِيلَ تَسْؤُسُهُمُ الْأَنْبِيَاءَ، كُلَّمَا هَلَكَ نَبِيٌّ خَلَفَهُ نَبِيٌّ، وَإِنَّهُ لَا نَبِيَّ بَعْدِي، وَسَيَكُونُ خُلَفَاءُ فَيَكْثُرُونَ، قَالُوا: فَمَا تَأْمُرُنَا؟ قَالَ: فُوا بِبَيْعَةِ الْأَوَّلِ فَلَا أَوَّلَ، أَعْطَوْهُمْ حَقَّهُمْ فَإِنَّ اللَّهَ سَائِلُهُمْ عَمَّا اسْتَرْعَاهُمْ»

“Banu Isra'il were ruled over by the Prophets. When one Prophet died, another succeeded him; but after me there is no Prophet and there will be caliphs and they will be quite large in number. His Companions said: What do you order us to do (in case we come to have more than one Caliph)? He said: The one to whom allegiance is sworn first has a supremacy over the others. Concede to them their due rights (i. e. obey them). Allah will question them about the subjects whom He had entrusted to them.” (agreed upon).

These narrations indicate that the *Khalifah* only gets his authority via this pledge, since Allah (swt) ordered obedience to him by this pledge – “Whoever has sworn the oath of allegiance to an Imam, must obey him” – so he took the *Khilafah* through the pledge and obedience to him is obligated because he is the *Khalifah* who has been contracted. So it means that he took the authority from the *Ummah* and the obligation of the *Ummah* obeying whomsoever it contracted, in other words, the one who has the pledge of allegiance upon their necks, by this pledge given to him, and this indicates that the authority is for the *Ummah*. On top of that, the Messenger ﷺ, even though he was a Messenger,

took the pledge of allegiance from the people. This was a pledge upon the rule and authority and not a pledge upon the Prophethood, and he took it from the women and the men and not from youngsters who had not yet reached the age of distinction. So the fact that the Muslims are the ones who establish the *Khalifah* and contract him upon the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ, and the fact that the *Khalifah* only takes his authority through this pledge, is clear evidence that the authority is for the *Ummah* to give to whomsoever they please.

As for the third principle, that to appoint a single *Khalifah* is obligatory upon the Muslims, the obligation of appointing the *Khalifah* is fixed in the noble narration, on the authority of Nafi' who said that 'Abd Allah b. Umar said that he heard the Messenger of Allah ﷺ say,

«مَنْ خَلَعَ يَدًا مِنْ طَاعَةِ لَقِيَ اللَّهَ يَوْمَ الْقِيَامَةِ لَا حُجَّةَ لَهُ، وَمَنْ مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً»

“One who withdraws his hand from obedience (to the Amir) will find no argument (in his defense) when he stands before Allah on the Day of Resurrection; and one who dies without having sworn allegiance will die the death of one belonging to the Days of Ignorance (jahilliyah)” (reported by Muslim through 'Abd Allah b. Umar). The angle of deduction from this narration is that the Messenger ﷺ made it obligatory upon every Muslim to have the pledge of allegiance to the *Khalifah* upon their neck, and did not make it necessary that every Muslim has to give that pledge to the *Khalifah*. So the obligation is the presence of the pledge upon the neck of every Muslim, in other words, the presence of a *Khalifah* due to whom there is a pledge present upon the neck of every Muslim. Accordingly, it is the presence of the *Khalifah* that makes the pledge present upon the neck of every Muslim irrespective of whether they had given him the pledge personally or not.

As for the issue of the *Khalifah* being one, it is due to the narration of Abu Said Al-Khudri that the Messenger of Allah ﷺ said,

«إِذَا بُويعَ لِخَلِيفَتَيْنِ فَأَقْتُلُوا الْآخَرَ مِنْهُمَا»

“When oath of allegiance has been taken for two caliphs, kill the one for whom the oath was taken later.” (reported by Muslim), and this is an unambiguous prohibition of allowing more than one *Khalifah* for the Muslims.

With respect to the fourth principle, which is that the leader of the State alone has the right to adopt the laws, this has been established by the *Ijma'* of the companions that the *Khalifah* alone has the right to adopt the laws, and from this *Ijma'* the famous *Shari'ah* principles: “*The order of the Imam resolves the difference*”, “*The order of the Imam is executed*” and “*The ruler can issue as many judgements as there are problems that appear*” are all derived.

Article 23

The state apparatus is established upon thirteen institutions:

- 1. The *Khalifah* (Leader of the State)**
- 2. The Assistants (delegated ministers)**
- 3. Executive minister**
- 4. The Governors**
- 5. The Amir of Jihad**
- 6. The Internal Security**
- 7. The Foreign Affairs**
- 8. Industry**
- 9. The Judiciary**

10. The People's Affairs (administrative apparatus)

11. The Treasury (*Bayt Al-Mal*)

12. Media

13. The Ummah's Council (*Shura* and accounting)

The evidence for this is the actions of the Messenger ﷺ, since he established the state apparatus in this form. He ﷺ was himself the leader of the State, and he ordered the Muslims to establish a leader for the state when he ordered them to establish the *Khalifah* and the *Imam*. He ﷺ said

«مَنْ خَلَعَ يَدًا مِنْ طَاعَةِ لَقِيَ اللَّهَ يَوْمَ الْقِيَامَةِ لَا حُجَّةَ لَهُ، وَمَنْ مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً»

“One who withdraws his hand from obedience (to the Amir) will find no argument (in his defense) when he stands before Allah on the Day of Resurrection; and one who dies without having sworn allegiance will die the death of one belonging to the Days of Ignorance (Jahilliyah)” (reported by Muslim), and the pledge of allegiance is the pledge of allegiance to the *Khalifah*. And the companions agreed upon the necessity of establishing a successor, a *Khalifah*, to the Messenger of Allah ﷺ after his death. The consensus of the companions upon the establishment of a *Khalifah* is clearly confirmed by their delaying of the burial of the Messenger of Allah ﷺ due to their busyness in electing a successor to him ﷺ.

As for the assistants, the evidence is from what Abu Dawud narrated with a good chain from 'Aisha (ra) who said that the Messenger of Allah ﷺ said

"إِذَا أَرَادَ اللَّهُ بِالْأَمِيرِ خَيْرًا جَعَلَ لَهُ وَزِيرَ صِدْقٍ، إِنْ نَسِيَ ذِكْرَهُ وَإِنْ ذَكَرَ
أَعَانَهُ. وَإِذَا أَرَادَ اللَّهُ بِهِ غَيْرَ ذَلِكَ جَعَلَ لَهُ وَزِيرَ سُوءٍ، إِنْ نَسِيَ لَمْ يُذَكِّرْهُ وَإِنْ ذَكَرَ لَمْ
يُعْنَهُ"

"When Allah (swt) appoints a governor over Muslims, and desire good for him (this ruler), Alla (swt) appoints a sincere minister (assistant) to him who will remind him if he forgets and helps him if he remembers." And Tirmidhi reported from Abu Said Al-Khudri that the Messenger ﷺ said

"مَا مِنْ نَبِيٍّ إِلَّا لَهُ وَزِيرَانِ مِنْ أَهْلِ السَّمَاءِ وَوَزِيرَانِ مِنْ أَهْلِ الْأَرْضِ فَأَمَّا
وَزِيرَايَ مِنْ أَهْلِ السَّمَاءِ فَجِبْرِيلُ وَمِيكَائِيلُ وَأَمَّا وَزِيرَايَ مِنْ أَهْلِ الْأَرْضِ فَأَبُو بَكْرٍ
وَعُمَرُ"

"Every Prophet has two ministers from heavens and two ministers from Earth. My two ministers from heavens are Jibril and Mika'il, and from Earth are Abu Bakr and Omar". The meaning of the word ***"my two ministers (Waziraya)"*** here is my two assistants for, since this is the linguistic meaning, and the word 'minister' according to its contemporary meaning is a Western definition, and what is intended by it is a specific act of ruling. This meaning was not known to the Muslims and contradicts the system of ruling in Islam as is made clear in that section.

The executive minister is what was known as *Al-Katib* (the recorder) at the time of the Messenger of Allah ﷺ and the righteous successors, and his job is to assist the *Khalifah* in the execution, follow up and accomplishment of tasks. Bukhari narrated in his *Sahih* from Zaid Bin Thabit

«أَنَّ النَّبِيَّ ﷺ أَمَرَهُ أَنْ يَتَعَلَّمَ كِتَابَ الْيَهُودِ حَتَّى كَتَبْتُ لِلنَّبِيِّ ﷺ كُتُبَهُ
وَأَقْرَأْتُهُ كُتُبَهُمْ إِذَا كَتَبُوا إِلَيْهِ»

“The Prophet ﷺ commanded him to learn the writing of the Jews. I even wrote letters for the Prophet ﷺ (to the Jews) and also read their letters when they wrote to him.” and Ibn Ishaq reported from ‘Abd Allah Bin Al-Zubair,

”أَنَّ رَسُولَ اللَّهِ ﷺ اسْتَكْتَبَ عَبْدَ اللَّهِ بْنَ الْأَرْقَمِ بْنِ عَبْدِ يَغُوثَ، وَكَانَ يُجِيبُ عَنْهُ الْمُلُوكَ ...“

“The Messenger of Allah used to dictate to ‘Abd Allah Bin Al-Arqam b. ‘Abdi Yaghootha, who used to respond to the Kings on his behalf...” Al-Hakim reported a narration in *Al-Mustadrak* which he authenticated, and Al-Dhahabi confirmed the authentication, from ‘Abd Allah Bin Umar who said

”أَتَى النَّبِيَّ ﷺ كِتَابُ رَجُلٍ، فَقَالَ لِعَبْدِ اللَّهِ بْنِ الْأَرْقَمِ: أَحِبَّ عَنِّي. فَكَتَبَ جَوَابَهُ ثُمَّ قَرَأَهُ عَلَيْهِ، فَقَالَ: أَصَبْتَ وَأَحْسَنْتَ، اللَّهُمَّ وَفَّقْهُ، فَلَمَّا وَلِيَ عُمَرُ كَانَ يُشَاوِرُهُ“

“A man’s letter came to the Prophet ﷺ, so he said to ‘Abd Allah Bin Al-Arqam: answer it on my behalf, and so he did and read it to the Prophet who ﷺ said: You were correct and you did well; may Allah help you. When Omar took office, he used to consult him”.

As for the governors, both Al-Bukhari and Muslim reported from Abu Birda

«بَعَثَ رَسُولُ اللَّهِ ﷺ أَبَا مُوسَى وَمُعَاذَ بْنَ جَبَلٍ إِلَى الْيَمَنِ، قَالَ: وَبَعَثَ كُلَّ وَاحِدٍ مِنْهُمَا عَلَى مَخْلَافٍ، قَالَ: وَالْيَمَنُ مَخْلَافَانِ»

“The Messenger of Allah ﷺ sent Abu Musa and Mu’adh Bin Jabal to Yemen. He sent each of them to administer a province as Yemen consisted of two provinces.” And in the report with Muslim from Abu Musa the Messenger ﷺ said,

«لَنْ أَوْ لَا نَسْتَعْمِلُ عَلَى عَمَلِنَا مَنْ أَرَادَهُ، وَلَكِنْ اذْهَبْ أَنْتَ يَا أَبَا مُوسَى أَوْ
يَا عَبْدَ اللَّهِ بْنَ قَيْسٍ، فَبَعْنَهُ عَلَى الْيَمَنِ ثُمَّ أَتْبِعَهُ مُعَاذَ بْنَ جَبَلٍ»

“We never (or, we do not) appoint for our affairs anyone who seeks to be employed. But O Abu Musa! (or Abdullah bin Qais!) Go to Yemen. “The Prophet then sent Mu adh bin Jaba after him.” Al-Bukhari and Muslim reported from Amr Bin ‘Auf Al-Ansari

... وَكَانَ رَسُولُ اللَّهِ ﷺ هُوَ صَالِحُ أَهْلِ الْبَحْرَيْنِ وَأَمَرَ عَلَيْهِمُ الْعَلَاءُ بْنَ الْحَضْرَمِيِّ

“... And the Messenger of Allah had made a truce with the people of Bahrain, and had appointed Al-‘Ala Bin Al-Hadrami over them”. Ibn Abdul Al-Birr in *Al-isti’ab* said “The Messenger of Allah ﷺ made Amr b. Al-‘As the governor over Oman, and he remained in that position until the death of the Messenger of Allah ﷺ”.

The evidence for the position of *Amir* of *Jihad* comes from the *Sunnah*:

Ibn Sa’d reported in *Al-Tabaqat* that the Messenger of Allah ﷺ said,

"أَمِيرُ النَّاسِ زَيْدُ بْنُ حَارِثَةَ، فَإِنْ قُتِلَ فَجَعْفَرُ بْنُ أَبِي طَالِبٍ، فَإِنْ قُتِلَ فَعَبْدُ اللَّهِ بْنُ رَوَاحَةَ، فَإِنْ قُتِلَ فَلْيَرْتَضِ الْمُسْلِمُونَ بَيْنَهُمْ رَجُلًا فَيَجْعَلُوهُ عَلَيْهِمْ"

“The Leader (Amir) of the people is Zaid Bin Haritha; if killed then Ja’far Bin Abi Talib; if killed then ‘Abd Allah Bin Rawaha; if he killed then whomever the Muslims are satisfied with will become their leader”. Al-Bukhari reported from ‘Abd Allah b. Umar (ra) who said

"أَمَرَ رَسُولُ اللَّهِ ﷺ فِي غَزْوَةِ مُؤَتَةَ زَيْدَ بْنَ حَارِثَةَ ... "

“The Messenger of Allah appointed Zaid Bin Haritha in charge of the Mu’ta expedition” and Al-Bukhari reported in the narration of Salamah Bin Al-Akwa’ that he said,

"غَزَوْتُ مَعَ النَّبِيِّ ﷺ سَبْعَ غَزَوَاتٍ وَغَزَوْتُ مَعَ ابْنِ حَارِثَةَ اسْتَعْمَلَهُ عَلَيْنَا"

“I went on seven expeditions with the Messenger of Allah, and one with Zaid Bin Haritha who had been appointed over us”. And Al-Bukhari and Muslim reported from ‘Abd Allah b. Umar who said,

"بَعَثَ النَّبِيُّ ﷺ بَعَثًا وَأَمَرَ عَلَيْهِمْ أَسَامَةَ بْنَ زَيْدٍ، فَطَعَنَ بَعْضُ النَّاسِ فِي إِمَارَتِهِ، فَقَالَ النَّبِيُّ ﷺ: أَنْ تَطْعُنُوا فِي إِمَارَتِهِ فَقَدْ كُنْتُمْ تَطْعُنُونَ فِي إِمَارَةِ أَبِيهِ مِنْ قَبْلُ، وَإِنَّمَا اللَّهُ إِنْ كَانَ لَخَلِيفًا لِلْإِمَارَةِ ..."

“The Prophet ﷺ sent an army detachment and made Usama bin Zaid its commander. Some people criticized (spoke badly of) Usama's leadership. So Allah's Prophet ﷺ got up and said, 'If you people are criticizing Usama's leadership, you have already criticized the leadership of his father before. But Waaimullah (i.e., By Allah), he (i.e. Zaid) deserved leadership”. Muslim reported from Barida who said,

"كَانَ رَسُولُ اللَّهِ ﷺ إِذَا أَمَرَ أَمِيرًا عَلَى جَيْشٍ أَوْ سَرِيَّةٍ أَوْصَاهُ ..."

“Whenever the Messenger of Allah ﷺ appointed anyone as a leader of an army or detachment, he would especially exhort him”.

As for the Internal Security, this is the office that will be led by the head of the Police, and its objective would be to protect the security in *Dar Al-Islam*. If they were incapable then the army would be appointed with the permission of the *Khalifah*. The evidence is from what was reported by Al-Bukhari from Anas

"كَانَ قَيْسُ بْنُ سَعْدٍ مِنَ النَّبِيِّ ﷺ يَمْنُوزِلُهُ صَاحِبَ الشُّرْطِ مِنَ الْأَمِيرِ"

“Qais bin Sa’d was to the Prophet like a chief police officer to an Amir”.

With respect to Foreign Affairs, the Messenger ﷺ used to establish external relations with other states and bodies. He ﷺ sent ‘Uthman Bin ‘Affan to negotiate with Quraysh, just as he ﷺ negotiated with the messengers of Quraysh. In the same manner, he sent messengers to the kings, and received messengers from the kings and leaders, and concluded agreements and peace settlements. And likewise, his successors, after him ﷺ, established diplomatic relations with other states and bodies. And they appointed others to do that for them, on the basis that what the individual does himself can be delegated to someone else on his behalf, and depute someone else to carry it out for him.

As for Industry, its evidence is from the Quran and the *Sunnah*. Allah (swt) said

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَءَاخِرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُمْ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فِي سَبِيلِ اللَّهِ يُوَفَّ إِلَيْكُمْ وَأَنْتُمْ لَا تُظْلَمُونَ﴾

“And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah knows. And whatever you spend in the cause of Allah will be fully repaid to you, and you will not be wronged.” (TMQ 8:60). With regards to the *Sunnah* Ibn Sa’d reported in *Al-Tabaqat* from Makhul,

“أَنَّ النَّبِيَّ ﷺ نَصَبَ الْمُنَجِّيقَ عَلَى أَهْلِ الطَّائِفِ أَرْبَعِينَ يَوْمًا”

“While attacking the people of at-Ta’if, the Prophet ﷺ set up the ballista for forty days.” And Al-Waqidi in *Al-Maghazi* said

"وَشَاوَرَ رَسُولُ اللَّهِ ﷺ أَصْحَابَهُ، فَقَالَ لَهُ سَلْمَانُ الْفَارِسِيُّ: يَا رَسُولَ اللَّهِ، أَرَأَيْتَ أَنْ تَنْصُبَ الْمَنْجَنِيْقَ عَلَى حِصْنِهِمْ، فَإِنَّا كُنَّا بِأَرْضِ فَارِسَ نَنْصُبُ الْمَنْجَنِيْقَاتِ عَلَى الْحُصُونِ وَتَنْصُبُ عَلَيْنَا. فَتُصِيبُ مِنْ عَدُوِّنَا وَيُصِيبُ مِنَّا بِالْمَنْجَنِيْقِ، وَإِنْ لَمْ يَكُنِ الْمَنْجَنِيْقُ طَالَ التَّوَّاءُ؛ فَأَمَرَهُ رَسُولُ اللَّهِ ﷺ فَعَمِلَ مَنْجَنِيْقًا بِيَدِهِ، فَنَصَبَهُ عَلَى حِصْنِ الطَّائِفِ ... "

“and the Messenger of Allah ﷺ consulted his companions; Salman Al-Farsi said to him, O Messenger of Allah, I think we should use the ballista against their fortifications. When we were in Persia, we used to use the ballista against fortification, and they were used against us; we hit them and they hit us. If it had not been for the ballista, the siege would have taken longer. The Messenger ﷺ commanded him to build ballista; he made one himself and set it up against Al-Ta’if fortifications”.

And Ibn Ishaq said in his *Sirah*

"حَتَّى إِذَا كَانَ يَوْمُ الشَّدْحَةِ عِنْدَ جِدَارِ الطَّائِفِ، دَخَلَ نَفَرٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ ﷺ تَحْتَ دَبَابَةٍ، ثُمَّ زَحَفُوا بِهَا إِلَى جِدَارِ الطَّائِفِ لِيَخْرُقُوهُ ... "

“On day that the wall protecting Ta’if broke, a number of the companions of the Messenger of Allah entered under a tank, and then marched forward to the wall in order to destroy it...” Also, preparation for that which puts fear into the enemy is obligatory and this preparation cannot be carried out without industry, and ,therefore, industry is obligatory from the rule

(ما لا يتم الواجب إلا به فهو واجب)

“whatever is required to complete an obligation is itself an obligation”. The *Khalifah* or anyone he appoints is the one who will manage it.

With respect to the judiciary, the Prophet ﷺ used to act as the judge personally, and appointed others to judge between the people. He used to undertake the judging himself as narrated by Umm Salamah that the Messenger of Allah ﷺ said

"إِنَّمَا أَنَا بَشَرٌ وَإِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ، وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ أَلْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ وَأَقْضَى لَهُ عَلَى نَحْوِ مَا أَسْمَعُ، فَمَنْ قَضَيْتُ لَهُ مِنْ حَقِّ أَخِيهِ شَيْئًا فَلَا يَأْخُذْ، فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ"

“Verily, I am only a human and the claimants bring to me (their disputes); perhaps some of them are more eloquent than others. I judge according to what I hear from them). So, he whom I, by my judgment, (give the undue share) out of the right of a Muslim, I in fact give him a portion of (Hell) Fire” (agreed upon with the wording from Al-Bukhari). And the narration of Abu Hurayrah and Zayd b. Khalid Al-Juhani who said

"جَاءَ أَعْرَابِيٌّ فَقَالَ: يَا رَسُولَ اللَّهِ، اقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ. فَقَامَ خَصْمُهُ فَقَالَ: صَدَقَ، اقْضِ بَيْنَنَا بِكِتَابِ اللَّهِ ... "

“A Bedoin came and said, "O Allah's Prophet! Judge between us according to Allah's Laws." His opponent got up and said, "He is right. Judge between us according to Allah's Laws ...” (agreed upon and the wording is from Al-Bukhari). As for the appointment of others to the judiciary, the evidence is what Al-Hakim narrated and stated was *Sahih* based upon the conditions of Muslim and Al-Bukhari which was also confirmed by Al-Dhahabi, from Ibn Abbas who said

"بَعَثَ النَّبِيُّ ﷺ إِلَى الْيَمَنِ عَلِيًّا فَقَالَ: عَلَّمَهُمُ الشَّرَائِعَ وَأَقْضِ بَيْنَهُمْ. قَالَ: لَا عِلْمَ لِي بِالْقَضَاءِ. فَدَفَعَ فِي صَدْرِهِ فَقَالَ: اللَّهُمَّ اهْدِهِ لِلْقَضَاءِ"

“The Prophet ﷺ sent ‘Ali to Yemen and said: Teach them the rules (Shari’ah) and judge between them. He replied I have no knowledge of judging, and so he ﷺ struck his chest and said O Allah guide him to judgement”. Al-Hakim also narrated and authenticated upon the conditions of Muslim and Al-Bukhari, and Al-Dhahabi agreed with him, that ‘Ali (ra) said

”بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى الْيَمَنِ فَقُلْتُ: تَبْعَثَنِي إِلَى قَوْمٍ ذَوِي أَسْنَانٍ وَأَنَا حَدَّثُ السَّنَّ! قَالَ: إِذَا جَلَسَ إِلَيْكَ الْخَصْمَانِ فَلَا تَقْضِ لأَحَدِهِمَا حَتَّى تَسْمَعَ مِنَ الْآخَرِ كَمَا سَمِعْتَ مِنَ الْأَوَّلِ. قَالَ عَلِيٌّ: فَمَا زِلْتُ قَاضِيًا”

“The Messenger of Allah ﷺ sent me to Yemen, and I said: You have sent me to people of experience, and I am young! He said: When the two litigants sit in front of you, do not decide till you hear what the other has to say. Ali (ra) said: I had been a judge for long”.

With respect to the consensus, Al-Mawardi mentioned in *Al-Hawi*, “The righteous khulafaa’ used to judge between the people, and appointed the judiciary and the rulers...and so it is a consensus through their actions”. Ibn Qudamah mentioned in *Al-Mugni* “The Muslims are agreed on the legitimacy of appointing judiciary”.

As for the peoples’ affairs (the administrative apparatus) the Messenger of Allah ﷺ used to manage the affairs and used to appoint writers for their administration. He ﷺ managed the peoples’ interests, took care of their affairs, resolved their problems, organised their relationships, protected their needs and directed them to what would benefit their matters. All of these are from the administrative affairs, which directs their lives without problems or complication.

In the issue of education, the Messenger of Allah ﷺ made ransom of the disbelieving prisoners that they should teach ten of the Muslim children. Ransom is part of the war booty, which is

the property of the Muslims, and so ensuring education is an interest from the Muslims' interests.

And in medical practice – the Messenger of Allah ﷺ was given a doctor as a gift and so he was made available to the Muslims. The fact that the Messenger of Allah ﷺ was given a gift which he did not use himself, and nor took it but rather gave it to the Muslims is a proof that medical practice is an interest from the people's interests. In an authentic narration from 'Aisha (ra) which is agreed upon she said

"أَصِيبَ سَعْدٌ يَوْمَ الْخَنْدَقِ رَمَاهُ رَجُلٌ مِنْ قُرَيْشٍ يُقَالُ لَهُ ابْنُ الْعُرْقَةِ رَمَاهُ فِي الْأَكْحَلِ فَضَرَبَ عَلَيْهِ رَسُولُ اللَّهِ ﷺ خِيَمَةً فِي الْمَسْجِدِ يَعُودُهُ مِنْ قَرِيبٍ ..."

“Sa’d was injured on the day of Al-Khandaq (battle of the Trench), having been hit by an arrow in the arm vein from a Qurayshi man called Ibn Al-Ariqa, and so the Messenger of Allah ﷺ set up a tent for him in the mosque to look after him”. It is understood from the concern of the Messenger ﷺ, who was the head of the State, over Sa’d while he was ill, by keeping him within the mosque, that medical practice or treatment is an interest from the Muslims' interests which the state takes care of. The righteous *Khulafaa'* followed the same practice. Al-Hakim narrated in *Al-Mustadrak* from Zayd b. Islam from his father who said

(مرضت في زمان عمر بن الخطاب مرضاً شديداً فدعا لي عمر طبيباً
فحمانني حتى كنت أمص النواة من شدة الحمية)

“I fell severely ill in the time of Umar b. Al-Khattab, and so Umar called a physician for me. He warmed me up to the point I would suck on date pits due to the intense heat”.

In affairs of work the Messenger of Allah ﷺ advised a man to purchase rope and an axe and then to collect wood and sell it to the people instead of asking them for money such that one

person would give and the next would refuse. This was in the narration from Abu Dawud and Ibn Maja which mentioned

«... وَاشْتَرِ بِالدِّرْهَمِ الْآخِرِ قُدُومًا فَأَتَيْتَنِي بِهِ، فَأَتَاهُ بِهِ، فَشَدَّ فِيهِ رَسُولُ اللَّهِ ﷺ عُودًا بِيَدِهِ ثُمَّ قَالَ: اذْهَبْ وَاحْتَطَبْ وَبِعْ، فَلَا أَرِيَنَّكَ خَمْسَةَ عَشَرَ يَوْمًا، فَفَعَلَ، فَجَاءَ وَقَدْ أَصَابَ عَشْرَةَ دَرَاهِمٍ...»

“...and buy an axe with the other dirham and bring it to me. He brought it to him. The Messenger of Allah ﷺ fixed a handle on it with his own hands and said: Go, gather firewood and sell it, and do not let me see you for fifteen days. The man went away and gathered firewood and sold it, and when he returned he had earned ten dirhams...” And in a narration from Al-Bukhari the Messenger of Allah ﷺ said,

«لَأَنْ يَأْخُذَ أَحَدُكُمْ حَبْلَهُ فَيَأْتِيَ بِحُزْمَةِ الْحَطَبِ عَلَى ظَهْرِهِ فَيَبِيعَهَا فَيَكُفَّ اللَّهُ بِهَا وَجْهَهُ خَيْرٌ لَهُ مِنْ أَنْ يَسْأَلَ النَّاسَ أَعْطَوْهُ أَوْ مَنَعُوهُ»

“It is better for anyone of you to take a rope (and cut) and bring a bundle of wood (from the forest) over his back and sell it and Allah will save his face (from the Hell-Fire) because of that, rather than to ask the people who may give him or not .” So he ﷺ used to solve the problem of work in that matter as one of the interests of the Muslims.

With regards to the highways, the Messenger of Allah ﷺ used to organise the pathways in his time by making the space of the pathway seven cubits if there was a dispute. Al-Bukhari narrated in the chapter of *Al-Tariq Al-Mita'* (the space between the road)

«قَضَى النَّبِيُّ ﷺ إِذَا تَشَاجَرُوا فِي الطَّرِيقِ بِسَبْعَةِ أَدْعٍ»

“The Prophet ﷺ judged that seven cubits should be left as a public way when there was a dispute about the pathway”, and Muslim narrated

«إِذَا اِخْتَلَفْتُمْ فِي الطَّرِيقِ جُعِلَ عَرْضُهُ سَبْعَ أَذْرُعٍ»

“When you disagree about a pathway, it is judged to be seven cubits in width”, which was an administrative organisation at that time and if the need was greater it would have been met, as it is in the *Shafi’i* school of thought.

In agriculture, Al-Zubayr and a man from the Ansar had a dispute regarding irrigation, and so the Prophet ﷺ said

«اسْقِ يَا زُبَيْرُ ثُمَّ أَرْسِلِ الْمَاءَ إِلَى جَارِكَ»

“O Zubayr, irrigate and then let the water flow to your neighbour” (agreed upon with the wording from Muslim).

This is the manner in which the Messenger of Allah ﷺ managed the affairs of the people and the righteous *khulafaa’* after him managed them either by themselves or by appointing someone to manage them.

As for the treasury, there are plenty of evidences that indicate that the *Bayt Al-Mal* was under the direct authority of the Messenger ﷺ, the *Khalifah*, or whoever was encharged with it by the *Khalifah*. And so the Messenger of Allah ﷺ sometimes used to directly store the wealth and he had a storehouse. He ﷺ would directly take the wealth, apportion it and put it in its place. At other times he ﷺ would appoint others to undertake these issues. The righteous *khulafaa’* after him ﷺ carried on in the same way after him ﷺ, either directly taking charge of the affairs of the treasury or appointing others to do it on their behalf.

The Messenger of Allah ﷺ would either place the wealth in the mosque, as has been narrated by Al-Bukhari from Anas who said

«أَتَى النَّبِيُّ ﷺ بِمَالٍ مِنَ الْبَحْرَيْنِ فَقَالَ: انْشُرُوهُ فِي الْمَسْجِدِ»

“Wealth from Bahrain was brought to the Prophet ﷺ. He said: Spread it out in the mosque”, or in one of his ﷺ wives’ rooms as has been narrated by Al-Bukhari from Uqbah who said,

«صَلَّيْتُ وَرَاءَ النَّبِيِّ ﷺ بِالْمَدِينَةِ الْعَصْرِ، فَسَلَّمْتُ ثُمَّ قَامَ مُسْرِعًا، فَتَخَطَّى رِقَابَ النَّاسِ إِلَى بَعْضِ حُجَرِ نِسَائِهِ، فَفَزِعَ النَّاسُ مِنْ سُرْعَتِهِ، فَخَرَجَ عَلَيْهِمْ، فَرَأَى أَنَّهُمْ عَجِبُوا مِنْ سُرْعَتِهِ، فَقَالَ: ذَكَرْتُ شَيْئًا مِنْ تَبَرِّ عِنْدَنَا، فَكَرِهْتُ أَنْ يَحْسِنِي، فَأَمَرْتُ بِقِسْمَتِهِ»

“I offered Asr prayer behind the Prophet ﷺ at Medina. When he had finished the prayer with Taslim, he got up hurriedly and went out by crossing the rows of the people to one of the dwellings of his wives. The people got scared at his speed . The Prophet ﷺ came back and found the people surprised at his haste and said to them, "I remembered a piece of gold lying in my house and I did not like it to divert my attention from Allah's worship, so I have ordered it to be distributed ”.

During the era of the righteous *Khulafaa'* the place where the wealth would be stored became known as the *Bayt Al-Mal* (treasury). Ibn Sa'd mentioned in *Al-Tabaqat* from Sahl b. Abi Hathmah and others

«أن أبا بكر كان له بيت مال بالسنع ليس يحرسه أحد، ف قيل له: ألا تجعل عليه من يحرسه؟ قال: عليه قفل. فكان يعطي ما فيه حتى يفرغ. فلما انتقل إلى المدينة، حوَّله فجعله في داره». وروى هناد في الزهد بإسناد جيد عن أنس قال: «جاء رجل إلى عمر فقال: يا أمير المؤمنين، احملني فإني أريد الجهاد، فقال عمر لرجل: خذ بيده فأدخله بيت المال يأخذ ما يشاء...»

“Abu Bakr had Bayt Al-Mal which had no one guarding it. It was said to him: Won't you appoint someone to guard it? He replied it has lock on it. He used to distribute all that were in it until it became empty. When he moved to Madinah, he took it and placed it in his house”. It is reported by Hinad in *Al-Zuhd* with a good chain from Anas ***“a man came to***

Omar and said: O leader of the believers, fund me because I want to participate in the Jihad, and so Omar said to a man – take him to Bayt Al-Mal, so that he can take whatever he wishes”.

As for information, the evidence for it is from the Quran and the *Sunnah*.

With respect to the Quran, He (swt) said

﴿وَإِذَا جَاءَهُمْ أَمْرٌ مِّنَ الْأَمْنِ أَوْ الْخَوْفِ أَذَاعُوا بِهِ ۖ وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَىٰ أُولَى الْأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنَظِرُونَ مِنْهُمْ ۖ﴾

“And when there comes to them information about [public] security or fear, they spread it around. But if they had referred it back to the Messenger or to those of authority among them, then the ones who [can] draw correct conclusions from it would have known about it.” (TMQ 4:83).

As for the *Sunnah*, the narration of Ibn Abbas during the opening of Makkah which is found in *Al-Mustadrak* of Al-Hakim who said it was authentic and upon the conditions of Muslim, and Al-Dhahabi confirmed this, which mentioned “and the news was kept from the Quraysh, and so they did not receive any information about the Messenger of Allah ﷺ and did not know what was being undertaken”. And a Mursal narration from Abu Salama with Ibn Abi Shaybah which mentioned: and then the Prophet ﷺ said to 'Aisha (ra),

«جَهِّزِي وَلَا تُعْلِمِي بِذَلِكَ أَحَدًا، ... ثُمَّ أَمَرَ بِالطُّرُقِ فُحِّسَتْ، فَعَمِيَ عَلَى أَهْلِ مَكَّةَ لَا يَأْتِيهِمْ خَبَرٌ»

“Prepare me, and do not inform anyone about it.and then he commanded that the highways be obstructed, and so the people of Makkah were kept in the dark and, no news came to them”

This indicates that the information which is connected to the security of the state is tied to the *Khalifah* or an institution which meets this aim.

As for the *Shura* (consultative) council, the Messenger ﷺ did not use to have a specific permanent council, but rather he used to consult the Muslims at numerous times in line with His (swt) words

﴿وَشَاوِرْهُمْ فِي الْأَمْرِ﴾

“And consult them in the matter.” (TMQ 3:159). An example of these consultations comes from what has been narrated by Muslim from Anas about the day of the battle of Badr:

"أَنَّ رَسُولَ اللَّهِ ﷺ شَاوَرَ حِينَ بَلَغَهُ إِقْبَالُ أَبِي سُفْيَانَ. قَالَ: فَتَكَلَّمَ أَبُو بَكْرٍ فَأَعْرَضَ عَنْهُ، ثُمَّ تَكَلَّمَ عُمَرُ فَأَعْرَضَ عَنْهُ، فَقَامَ سَعْدُ بْنُ عُبَادَةَ فَقَالَ: إِيَّاْنَا تُرِيدُ يَا رَسُولَ اللَّهِ، وَالَّذِي نَفْسِي بِيَدِهِ، لَوْ أَمَرْتَنَا أَنْ نُخِصَّهَا الْبَحْرَ لِأَخَصْنَاهَا، وَلَوْ أَمَرْتَنَا أَنْ نَضْرِبَ أَكْبَادَهَا إِلَى بَرْكِ الْغِمَادِ لَفَعَلْنَا. قَالَ فَتَدَبَّرَ رَسُولُ اللَّهِ ﷺ فَانْطَلَقُوا حَتَّى نَزَلُوا بَدْرًا"

The Messenger of Allah ﷺ held consultations with his Companions. The narrator said: Abu Bakr spoke (expressing his own views), but he ﷺ did not pay heed to him. Then spoke 'Umar , but he ﷺ did not pay heed to him (too). Then Sa'd b. 'Ubada stood up and said: Messenger of Allah, you want us (to speak). By God in Whose control is my life, if you order us to plunge our horses into the sea, we would do so. If you order us to goad our horses to the most distant place like Bark Al-Ghimad, we would do so. The narrator said: Now the Messenger of Allah ﷺ called upon the people (for the encounter). So they set out and encamped at Badr". Al-Bukhari reported another

example from the day of Al-Hudaybiyah through Al-Miswar and Marwan who said:

"وَسَارَ النَّبِيُّ ﷺ حَتَّى كَانَ بِغَدِيرِ الْأَشْطَاطِ أَتَاهُ عَيْنُهُ، قَالَ إِنَّ قُرَيْشًا جَمَعُوا لَكَ جُمُوعًا، وَقَدْ جَمَعُوا لَكَ الْأَحَابِيشَ، وَهُمْ مُقَاتِلُوكَ وَصَادُوكَ عَنِ الْبَيْتِ، وَمَانِعُوكَ. فَقَالَ: أَشِيرُوا أَيُّهَا النَّاسُ عَلَيَّ، أَتَرَوْنَ أَنْ أَمِيلَ إِلَى عِيَالِهِمْ وَذُرَارِيِّ هَؤُلَاءِ الَّذِينَ يُرِيدُونَ أَنْ يَصُدُّوَنَا عَنِ الْبَيْتِ؟ فَإِنْ يَأْتُونَا كَانَ اللَّهُ عَزَّ وَجَلَّ قَدْ قَطَعَ عَيْنًا مِنَ الْمُشْرِكِينَ وَإِلَّا تَرَكْنَاهُمْ مَحْرُوبِينَ. قَالَ أَبُو بَكْرٍ: يَا رَسُولَ اللَّهِ خَرَجْتَ عَامِدًا لِهَذَا الْبَيْتِ لَا تُرِيدُ قَتْلَ أَحَدٍ وَلَا حَرْبَ أَحَدٍ، فَتَوَجَّهَ لَهُ فَمَنْ صَدَّنَا عَنْهُ قَاتَلْنَاهُ. قَالَ امْضُوا عَلَى اسْمِ اللَّهِ..."

"The Prophet ﷺ proceeded on till he reached (a village called) Ghadir-Al-Ashtat. There his spy came and said, 'The Quraish (infidels) have collected a great number of people against you, and they have collected against you the Ethiopians, and they will fight with you, and will stop you from entering the Ka`ba and prevent you.' The Prophet ﷺ said, 'O people! Give me your opinion. Do you recommend that I should destroy the families and offspring of those who want to stop us from the Ka`ba? If they should come to us (for peace) then Allah will destroy a spy from the pagans, or otherwise we will leave them in a miserable state.' On that Abu Bakr said, 'O Allah Prophet! You have come with the intention of visiting this House (i.e. Ka`ba) and you do not want to kill or fight anybody. So proceed to it, and whoever should stop us from it, we will fight him.' On that the Prophet said, 'Proceed on, in the Name of Allah!'" Though he ﷺ gathered the Muslims and consulted them, he would call specific people consistently to consult with, and these were the leaders of the people; Hamza, Abu Bakr, Ja'far, Umar, 'Ali, Ibn Mas'ud, Sulayman, 'Ammar, Hudhayfah, Abu Dharr, Al-Miqdad, and Bilal (may Allah be pleased with them). They could be considered as a *Shura* council for him due to his specifically seeking them out consistently for consultation.

In the same manner the righteous *khulafaa*’ would consult the people generally, and would specifically seek out individuals for consultation. Abu Bakr (ra) used to specially consult men from the emigrants and Ansar in order to take their opinion if an issue occurred, and they were the people of *Shura* to him. The people of *Shura* in his time were the ‘*ulama*’ and those who would give *fatawa* (verdicts). Ibn Sa’d reported from Al-Qasim

«أن أبا بكر الصديق كان إذا نزل به أمر يريد مشاورة أهل الرأي وأهل الفقه فيه، دعا رجالاً من المهاجرين والأنصار، دعا عمر، وعثمان، وعلياً، وعبد الرحمن بن عوف، ومعاذ بن جبل، وأبي بن كعب، وزيد بن ثابت»

“When some issue occurred at the time of Abu Bakr Al-Siddiq making him want to consult with the people of insight and Fiqh, he would call some men from the emigrants and Ansar; he would call Umar, Uthman, Ali, ‘Abd Al-Rahman b. ‘Awf, Mu’adh Bin Jabal, Abai Bin Ka’ab and Zayd b. Thabit.”
All of these used to give *fatawa* during the *Khilafah* of Abu Bakr (ra), and the people would refer to them for verdicts and so this was the way that Abu Bakr (ra) preceded and when Umar (ra) took charge he used to call that same group of men.

All of this indicates taking a specific council that represents the *Ummah* for the fixed *Shura* that is mentioned in the text of the Quran and *Sunnah*, which is called the People’s Council (*Majlis Al-Ummah*) since it is the representative of the *Ummah* in *Shura*. In the same manner, its work would include accounting due to the evidence recorded. Muslim reported,

«سَتَكُونُ أُمَرَاءُ فَتَعْرِفُونَ وَتُنَكِّرُونَ، فَمَنْ عَرَفَ بَرِيءٌ، وَمَنْ أَنْكَرَ سَلِمَ، وَلَكِنْ مَنْ رَضِيَ وَتَابَعَ، قَالُوا: أَفَلَا نُقَاتِلُهُمْ؟ قَالَ: لَا مَا صَلَّوْا»

“There will be Amirs (rulers) and you will like their good deeds and dislike their bad deeds. One who sees through their deeds (and tries to prevent their repetition), is absolved from blame, and one who hates their bad deeds (in their hearts, being

unable to prevent their recurrence), is (also) safe. But one who approves of their bad deeds and imitates them is spiritually ruined. They asked: "Shouldn't we fight against them?" He replied: No, as long as they still pray" and prayer here is a metaphor for ruling by Islam.

Part of accounting is Muslims disputing at the start of the issue and at the head of them is Umar (ra) who did that to Abu Bakr (ra) when he was insistent to fight against the apostates. Muslim and Al-Bukhari reported from Abu Hurayrah who said,

«لَمَّا تُوفِّيَ رَسُولُ اللَّهِ ﷺ وَكَانَ أَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُ، وَكَفَرَ مَنْ كَفَرَ مِنَ الْعَرَبِ، فَقَالَ عُمَرُ رَضِيَ اللَّهُ عَنْهُ: كَيْفَ تُقَاتِلُ النَّاسَ وَقَدْ قَالَ رَسُولُ اللَّهِ ﷺ: أُمِرْتُ أَنْ أَقَاتِلَ النَّاسَ حَتَّى يَقُولُوا لَا إِلَهَ إِلَّا اللَّهُ، فَمَنْ قَالَهَا فَقَدْ عَصَمَ مِنِّي مَالَهُ وَنَفْسَهُ إِلَّا بِحَقِّهِ، وَحِسَابُهُ عَلَى اللَّهِ. فَقَالَ: وَاللَّهِ، لَأُقَاتِلَنَّ مَنْ فَرَّقَ بَيْنَ الصَّلَاةِ وَالزَّكَاةِ، فَإِنَّ الزَّكَاةَ حَقُّ الْمَالِ، وَاللَّهِ، لَوْ مَنَعُونِي عَنَّا كَانُوا يُؤَدُّونَهَا إِلَى رَسُولِ اللَّهِ ﷺ لَقَاتَلْتُهُمْ عَلَى مَنَعِهَا. قَالَ عُمَرُ رَضِيَ اللَّهُ عَنْهُ فَوَاللَّهِ مَا هُوَ إِلَّا أَنْ قَدْ شَرَحَ اللَّهُ صَدْرَ أَبِي بَكْرٍ رَضِيَ اللَّهُ عَنْهُ فَعَرَفْتُ أَنَّهُ الْحَقُّ»

“When Allah's Prophet ﷺ died and Abu Bakr became the caliph some Arabs renegade (reverted to disbelief) (Abu Bakr decided to declare war against them), `Umar, said to Abu Bakr, "How can you fight with these people although Allah's Prophet ﷺ said, 'I have been ordered (by Allah) to fight the people till they say: "None has the right to be worshipped but Allah, and whoever said it then he will save his life and property from me except on trespassing the law (rights and conditions for which he will be punished justly), and his accounts will be with Allah.' " Abu Bakr said, "By Allah! I will fight those who differentiate between the prayer and the Zakat as Zakat is the

compulsory right to be taken from the property (according to Allah's orders) By Allah! If they refuse to pay me even a she-kid which they used to pay at the time of Allah's Prophet ﷺ. I would fight with them for withholding it" Then `Umar said, "By Allah, it was nothing, but Allah opened Abu Bakr's chest towards the decision (to fight) and I came to know that his decision was right ”

Likewise, Bilal Bin Rabah (ra) and Al-Zubayr (ra) and others disputed with Umar (ra) about his decision regarding splitting the land of Iraq between the fighters, and how a Bedouin argued with Umar (ra) regarding protecting some of the land; Abu ‘Ubayd narrated in *Al-Amwal* from Amer Bin ‘Abd Allah Bin Al-Zubayr, I consider it to be from his father, who said

«أتى أعرابي عمر فقال: يا أمير المؤمنين، بلادنا قاتلنا عليها في الجاهلية، وأسلمنا عليها في الإسلام، علام تحميها؟ قال: فأطرق عمر، وجعل ينفخ ويفتل شاربته، وكان إذا كربه أمر فتل شاربته ونفخ، فلما رأى الأعرابي ما به جعل يردد ذلك عليه، فقال عمر: المال مال الله، والعباد عباد الله، والله لولا ما أحمل عليه في سبيل الله ما حميت من الأرض شبراً في شبر»

“A Bedouin came to Omar and said: O Amir of the believers, we fought on our land in Jahiliyyah, and we became Muslims while it is still under our possession, – Why are you protecting it (make it Hima) ? Umar bowed his head, blew and twisted his moustache – would do so when distressed – so when the Bedouin saw what he was doing, he repeated what he said again. Then Umar said: The property is Allah’s property, and the slaves are Allah’s; I swear by Allah- had I not been charged with that in the cause of Allah, would I not have protected (made Hima) a hand-span of land”. , and Umar (ra) used to protect some of the land from the general property for the Muslim cavalry. In the same way a woman accounted him over his prohibition of people increasing the *Mahr* over four hundred *Dinar*, saying to him:

ليس هذا لك يا عمر: أما سمعت قول الله سبحانه: ﴿وَأَتَيْتُمُ إحْدَهُنَّ

قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا﴾ [النساء ٢٠] فقال: أصابت امرأة وأخطأ عمر

“This is not for you Umar – did not you hear the words of Allah “And you have given one of them a great amount [in gifts], do not take [back] from it anything.” (TMQ 4:20), and so he said the woman is correct and Umar (ra) is wrong.

In this way, the explanation for this article has been made clear in that the Messenger ﷺ established a specific apparatus for the State with a specific form and applied that until he met His Lord (swt). The righteous *Khulafaa*’ after him continued upon the same method, ruling according to this apparatus that the Messenger ﷺ set up, as seen and heard by the companions, and for this reason it is specified that the apparatus of the Islamic State should be upon this form.

The *Khalifah*

Article 24

The *Khalifah* is the representative of the *Ummah* in exercising of the authority and in implementing of the *Shari'ah*.

The *Khilafah* is the general leadership for all of the Muslims in the World, in order to establish the rules of the *Shari'ah* and to carry the Islamic call to the world. The ones whom appoint the one who undertakes this leadership, in other words, appoint the *Khalifah*, are the Muslims alone. Since the authority belongs to the *Ummah*, and the implementation of the *Shari'ah* is obligatory upon the Muslims, and the *Khalifah* is a leader for them, accordingly his reality is that he is their representative in the authority and the implementation of the *Shari'ah*. Therefore, there is no *Khalifah* unless the *Ummah* gives him the pledge of allegiance; their pledge to him is proof that he is their representative. The obligation of obedience to him is proof that this pledge, which concludes the contracting of the *Khilafah* to him, gives him the authority, and this means that he is their representative in the authority. And upon this basis this article has been drafted.

Article 25

The *Khilafah* is a contract of choice and consent, so no one is compelled to accept it, and no one is compelled to choose the one who would undertake it.

The proof for this is the evidence that any *Shari'ah* contract is completed between two parties since it is a contract

like all the other contracts. On top of that, the narration of *the Bedoin gave the pledge of allegiance to Allah's Prophet ﷺ for Islam. Then the Bedoin got fever at Medina, came to Allah's Prophet and said, "O Allah's Prophet! Cancel my Pledge," But Allah's Prophet ﷺ refused. Then he came to him (again) and said, "O Allah's Prophet! Cancel my Pledge." But the Prophet ﷺ refused. Then he came to him (again) and said, "O Allah's Prophet! Cancel my Pledge." But the Prophet refused. The Bedouin finally went out (of Medina) whereupon Allah's Prophet ﷺ said,*

«إِنَّمَا الْمَدِينَةُ كَالْكَبِيرِ تَنْفِي خَبَثَهَا وَيَنْصَعُ طَيِّبَهَا»

"Medina is like a pair of bellows (furnace): It expels its impurities and brightens and clears its good." (agreed upon by Muslim and Al-Bukhari). As the pledge upon the *Khilafah* is a pledge upon obedience to the one who has the right to be obeyed from the people of authority, then it is a contract upon choice and consent, and so it is not correct by compulsion; neither compulsion on the one given the pledge nor compulsion upon those who are giving the pledge due to the words of the Messenger ﷺ

«إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنَّسْيَانَ وَمَا اسْتَكْرَهُوا عَلَيْهِ»

"Allah has forgiven my nation (Ummati) for mistakes and forgetfulness, and what they are forced to do." (reported by Ibn Maja through Ibn 'Abbas), and this is general for every contract including the contract of the *Khilafah*. Accordingly, every contract that occurs due to compulsion is void, since it has not been contracted. In the same manner as the other contracts, the *Khilafah* is not contracted by compulsion.

Likewise, the *Khilafah* is not completed except with two contracting parties like any other contract; so, someone would not be a *Khalifah* unless someone appoints him to the *Khilafah*, and so if someone appoints themselves as *Khalifah* without a pledge from those whom the *Khilafah* is contracted through, he would

not be a *Khalifah* unless they gave him the pledge with satisfaction and consent, in which case he becomes *Khalifah* after this pledge; as for before it then he would not be considered such. If the people are forced to give the pledge, the person would not be the *Khalifah* after this pledge which was taken by compulsion, and the *Khilafah* would not be contracted to him since it is a contract which is not contracted through compulsion due to the words of the Messenger ﷺ

«إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنَّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ»

“Allah has forgiven my nation (Ummati) for mistakes and forgetfulness, and what they are forced to do.”, and what has been forgiven is considered to be void.

Article 26

Every sane, adult Muslim, a male or a female, has the right to elect the leader of the State and to give him the pledge of allegiance; while the non-Muslims do not have such right.

The reality of the *Khilafah* is evidence that every Muslim has the right to elect the *Khalifah* and to give him the pledge, since there are narrations which indicate that it is the Muslims who give the pledge of allegiance to the *Khalifah*, irrespective of whether they were male or female; it is narrated by ‘Ubadah b. Samit

«بَايَعْنَا رَسُولَ اللَّهِ ﷺ...»

“We gave the oath of allegiance to the Messenger of Allah...” reported by Al-Bukhari, and narrated from Um Attiyya who said

«بَايَعْنَا رَسُولَ اللَّهِ ﷺ...»

“We have the oath of allegiance to the Messenger of Allah...” also from Al-Bukhari, and what Ibn Kathir reported in *Al-Bidayah Wal-Nihayah* when ‘Abd al Rahman b. ‘Auf was appointed to take the opinion of the Muslims as to who should be the *Khalifah* he said ***“He took men’s and women’s opinions”***, and not one of the companions rebuked him over this. So every Muslim, a male or a female, has the right to elect the *Khalifah* and to give him the pledge of allegiance. As for the non-Muslims they have no right in these issues since the pledge of allegiance is upon the Book and the *Sunnah* and he does not believe in either of them, since if he believes in them he would be a Muslim.

Article 27

If the *Khilafah* is contracted to an individual by the pledge of those it is valid to be contracted with, the pledge of the remainder of the people is a pledge upon obedience and not a pledge of contracting; and so, any one who is seen to have the potential of rebellion is forced to give the pledge.

The evidence for this is what happened in the pledge of the four *Khulafaa*’, because it was an *Ijma*’ of the companions. In the pledge of Abu Bakr (ra), the people of power and influence (*Ahl Al-Hal wal-‘Aqd*) of Madinah alone were sufficient, and that was the case in the pledge of Umar (ra), and in the pledge of ‘Uthman (ra) it was enough to take the opinion of the Muslims in Madinah, and take the pledge from them, and in the pledge of Ali (ra) the pledge of the majority of the people of Madinah and Kufa was enough. All of this indicates that it is not necessary that all the Muslims have to give the pledge in order to contract the *Khilafah*; rather the pledge of most of their representatives is enough. As for the remainder, then if they gave a pledge their pledge is upon obedience.

With respect to forcing those whom may rebel to take the pledge after the pledge of the majority of the representatives, the evidence is the resolve of our master Ali (ra) to make Mu'awiyah give him the pledge and agree with what the people had agreed, and his forcing of Talha and Az-Zubayr to take his pledge, and none of the companions rebuked him for doing so, though some of them gave him advice not to remove Mu'awiyah from the governorship of As-Sham. The silence of the companions upon the actions of one of them, if it was from the actions that are rebuked – such as forcing someone to take the pledge whereas it is a contract upon satisfaction and consent – is considered to be an *Ijma'* of silent consent, and is considered a *Shari'ah* evidence.

Article 28

No one can be *Khalifa* unless the Muslims appoint him, and no one possesses the mandatory powers of the leadership of the State unless the contract with him has been concluded according to the *Shari'ah*, like any contract in Islam.

The evidence is that the *Khilafah* is a contract upon satisfaction and consent, since its reality as a contract means it is not contracted except through two contracting parties, and ,therefore, no one is the *Khalifah* unless he was appointed to it by those whose agreement completes the conclusion of the contract according to the *Shari'ah*. So if someone appoints himself *Khalifah* without the pledge from those whom the *Khilafah* is contracted through, then he would not be a *Khalifah* until his pledge occurs with choice and consent from those whom the conclusion of the contract takes place. So the fact that the *Khilafah* is a contract necessitates the presence of two contracting parties, with each of them having the necessary *Shari'ah* qualifications to be entrusted with the contract and conclude it.

If a conqueror came about and took the ruling by force he does not become a *Khalifah* by that, even if he announces himself as *Khalifah* of the Muslims, since the *Khilafah* was not contracted to him by the Muslims. If he took the pledge of allegiance from the people by force and compulsion, he does not become the *Khalifah* even if he was given the pledge, since the pledge given through compulsion and force is not considered, and so the *Khilafah* cannot be contracted by it. This is because a contract of choice and consent cannot be completed through compulsion and force, and so it is not contracted except through a pledge given with satisfaction and consent. However, if this conqueror managed to convince the people that it was in the benefit of the Muslims to give him the pledge, and that the implementation of the *Shari'ah* would be complete through giving the pledge to him – and so the people became convinced and satisfied with that and gave him the pledge of allegiance on that basis with their own choice, then he would become the *Khalifah* from the moment that he was given that pledge by the people freely even though he took the authority through force and power. Therefore, the condition is the contracting of the pledge, and this is only reached through consent and choice, irrespective of whether the one who reached it was the ruler and leader, or wasn't.

Article 29

It is stipulated that the authority of the region or the country that gives the *Khalifah* a contracting pledge is autonomous dependent upon the Muslims alone, and not upon any disbelieving state; besides the security of the Muslims in that country, both internally and externally, is by the security of Islam not the security of the disbelief. With respect to the pledge of obedience taken from other countries, there are not such conditions.

The evidence is the forbiddance of the disbelievers having authority over the Muslims, in accordance with the His (swt) words

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

“And never will Allah give the disbelievers over the believers a way [to overcome them].” (TMQ 4:141), so if the authority of the disbelievers over the Muslims is present in any part of the Islamic lands, then that land would not be suitable to establish the *Khalifah*, since the establishment of a *Khalifah* is simply the establishment of an authority. Since that land does not possess the authority it ,therefore, cannot give it. Also its authority is an authority of disbelief, and the *Khalifah* is not established with the authority of disbelief.

This is from the angle of the authority; as for the issue of security, its evidence is the evidence for *Dar Al-Islam* and *Dar Al-Kufr*, since the establishment of the *Khalifah* would make the abode into an abode of Islam, and it is not possible for an abode to be an abode of Islam simply by establishing the rule of Islam but rather it is imperative that its security is by the security of Islam and not that of disbelief, since the conditions for the abode to be considered an abode of Islam are: firstly, to be ruled by Islam and secondly, for its security to be the security of Islam and not the security of disbelief.

Article 30

The only conditions for the one who is given the pledge to be the leader of the State is that he fulfils the contracting conditions of the contract, even if he does not fulfil the preference conditions, since what matters are the contracting conditions of the contract.

The proof for this is the evidences that were narrated regarding the characteristics of the *Khalifah*. In some of the narrations regarding his characteristics the request is non-decisive, such as his ﷺ words

«إِنَّ هَذَا الْأَمْرَ فِي قُرَيْشٍ»

“The authority of ruling (Al-amr) is in Quraysh” (reported by Al-Bukhari from Mu’awiyah). This narration is informative, and it is in the informative form, and though it conveys the meaning of a request, it is not considered decisive as long as it is not accompanied by an indication that confirms its decisiveness, and there is no such indication from an authentic narration. As for what is transmitted in the narration,

«لَا يُعَادِيهِمْ أَحَدٌ إِلَّا كَبَهُ اللَّهُ عَلَى وَجْهِهِ مَا أَقَامُوا الدِّينَ»

“Whoever bears hostility to them, Allah will destroy him as long as they abide by the laws of religion” – this is to do with showing enmity to them and not as a confirmation for his ﷺ words

«إِنَّ هَذَا الْأَمْرَ فِي قُرَيْشٍ»

“The authority of ruling (Al-Amr) is in the Quraysh”. This is apart from the fact that the word “Quraysh” is a noun and not an adjective, and is called a *Laqab* (title) in *Usul Al-Fiqh*, and the understanding (*Mafhum*) of the noun, or *Laqab* is not acted upon since the noun or *Laqab* does not have a *Mafhum*. For that reason the text about the Quraysh does not mean that other than they cannot be appointed.

Based upon this, this narration indicates a preferred condition and not a condition of contracting due to the absence of an indication that would make the request decisive; rather there is an indication that makes it non-decisive. When the Messenger ﷺ offered himself to the tribe of ‘Amir Bin Sa’asa’a who asked

«أَيُّكُونُ لَنَا الْأَمْرُ مِنْ بَعْدِكَ» قَالَ: «إِنَّ الْأَمْرَ لِلَّهِ يَضَعُهُ حَيْثُ يَشَاءُ»

“Will the matter (authority of ruling) remain with us after you”, to which he ﷺ said ***“The matter (authority of ruling) is in the Hand of Allah; He gives it to whoever He wills”,*** narrated by Ibn Ishaq from Al-Zuhri, then this indicates that the request was non-decisive since the reply of the Messenger ﷺ indicates the permission for the order to be with them after him ﷺ, and permitted to be with other than them, which indicates that the condition of being from Quraysh is a condition of preference.

As for the conditions of contracting, they are those that are related with a decisive request such that their absence leads to an absence of contracting (as is understood from the definition of what is a condition). In other words, the result of its absence would mean the invalidity of the *Khilafah* for him if he was not from Quraysh. The reply of the Messenger ﷺ to the tribe of ‘Amir takes the request away from being decisive, as opposed to what has been narrated in the texts for the conditions of contracting. For example, the condition of maturity comes from the fact that the Messenger ﷺ refused to take the pledge of allegiance from a child – when he refused to take allegiance from ‘Abd Allah b. Hisham – and the reason was due to his young age. Therefore, it is evidence that it is a condition for the *Khalifah* to be adult, since if the pledge is not correct from the child then by greater reasoning it would not be correct for the child to be the *Khalifah*.

Whatever characteristic has been mentioned by a decisive request is considered a condition for the contracting of the *Khilafah* with him, and anything else is not made a condition for contracting even if there is a text which mentions it as long as the request was non-decisive.

Article 31

There are seven conditions for the *Khalifah* to be contracted, which are: to be male, Muslim, free, adult, sane, just, and from the people who have the capability.

Since the *Khilafah* is a part of the ruling (guardianship), or rather it is the greatest guardianship, for that reason the text of the 19th article is mentioned here, in other words, the obligation for the seven mentioned conditions to be fulfilled:

The evidence that the *Khalifah* should be male is what has been narrated from the Messenger ﷺ that when he heard that the Persians had given the rule to the daughter of Kisra, he ﷺ said

«لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ»

“Never will succeed such a nation that makes a woman their leader.” (narrated by Al-Bukhari from Abu Bakrah); this narration contains a decisive prohibition regarding a woman being appointed the leader of a State, since the expression **“never”** indicates permanency, which is an exaggeration in negating the success, so it is a blame, which means that the request to leave the *Khalifah* from being a woman is a decisive request, and for this reason it was made a condition that he should be male.

As for the condition that he should be Muslim, this is due to His (swt) words

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

“And never will Allah give the disbelievers over the believers a way [to overcome them].” (TMQ 4:141), which is also a decisive prohibition since the expression **“never”** indicates permanency, and is information with the meaning of a request. As long as Allah (swt) prohibited the disbelievers having a way over the believers, then He (swt) prohibited for them to be made rulers

over them, since the rule is the greatest way over the Muslims. Additionally, the *Khalifah* is the person of authority, and Allah (swt) made it a condition that the person of authority should be a Muslim. Allah (swt) said

﴿أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ﴾

“O you who have believed, obey Allah and obey the Messenger and those in authority among you.” (TMQ 4:59) and He (swt) said

﴿وَإِذَا جَاءَهُمْ أَمْرٌ مِنَ الْأَمْنِ أَوْ الْخَوْفِ أَذَاعُوا بِهِ وَلَوْ رَدُّوهُ إِلَى

الرَّسُولِ وَإِلَى أُولِيَ الْأَمْرِ مِنْهُمْ﴾

“And when there comes to them information about [public] security or fear, they spread it around. But if they had referred it back to the Messenger or to those of authority among them.” (TMQ 4:83). The words “*people of authority*” are not mentioned in the Quran unless it is also mentioned that they are from the Muslims, which indicates that the person of authority must be a Muslim. And since the *Khalifah* is the person of authority, and he is the one who appoints the people of authority, then it is a condition that he must be a Muslim.

With respect to the condition that he should be free, this is since the slave is owned by his master and so does not control the independence of conduct for himself, and by greater reasoning he does not control the conduct of others, and ,therefore, he cannot control the guardianship over the people.

As for the condition that he should be an adult, this is due to what was narrated by ‘Ali b. Abi Talib (ra) that the Messenger ﷺ said

«أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ رَفَعَ الْقَلَمَ عَنْ ثَلَاثَةٍ عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنْ الصَّغِيرِ حَتَّى يَكْبُرَ وَعَنْ الْمَجْنُونِ حَتَّى يَعْقِلَ أَوْ يُفِيقَ»

“The Pen has been lifted from three (their actions are not recorded): from the sleeping person until he awakens, from the minor until he grows up, and from the insane person until he comes to his senses” and in a narration

«وَعَنْ الْمُتَبَلَّى حَتَّى يَبْرَأَ»

“and from the afflicted person, until he recovers”, reported by Ibn Maja and Al-Hakim from ‘A’ishah, and the wording is from Ibn Maja. Al-Tirmidhi and Ibn Khuzaymah also reported a similar narration through ‘Ali (ra).

What is understood from lifting the pen is that it is not correct for him to act independently in his own affairs, so it would not be correct for him to be the *Khalifah*. Also, it is narrated from Abu Hurayrah that the Messenger ﷺ said

«تَعَوَّذُوا بِاللَّهِ مِنْ رَأْسِ السَّبْعِينَ وَإِمَارَةِ الصَّبِيَّانِ»

“Seek refuge to Allah from the head of the seventy and the power of children” reported by Ahmad from Abu Hurayrah, which includes proof that it is not correct for a child to be the *Khalifah*. There is another narration from Abu ‘Aqil Zahrah Bin Ma‘bad, on the authority of his grandfather ‘Abd Allah Bin Hisham who lived at the time of the Prophet ﷺ, and his mother Zaynab bint Hamid took him to the Messenger ﷺ and said

يَا رَسُولَ اللَّهِ، بَايِعْهُ،

“O Messenger of Allah, take the pledge from him”, and so the Messenger ﷺ said

«هُوَ صَغِيرٌ، فَمَسَحَ رَأْسَهُ وَدَعَا لَهُ»

“He is young”, and touched his head and prayed for him, as reported by Al-Bukhari. Since the child is not permitted to give

the pledge, then by greater reasoning he is not permitted to be given the pledge either.

As for the condition of being sane, the narration which was just mentioned

«رفع القلم عن ثلاثة...»

“the pen has been lifted from three ...” to

«والمبتلى حتى يبرأ»

“the afflicted person until he recovers” and in another narration

«والمجنون حتى يفيق»

“the insane until he comes to his senses”, and from the understanding of raising of the pen is that it is not correct for him to act independently in his own affairs, so it would not be correct for him to be the *Khalifah* and act upon the affairs of other people.

With respect to the condition of being just, this is because Allah (swt) made it a condition for the witness to be just; He (swt) says

﴿وَأَشْهِدُوا ذَوَىٰ عَدْلٍ مِّنكُمْ﴾

“And bring to witness two just men from among you.” (TMQ 65:2), and so the one who is more significant than the witness, and that is the *Khalifah*, must by greater reasoning also be just. That is because if the just characteristic has been made a condition for the witness then for it to be a condition for the *Khalifah* is of a higher priority.

As for the condition that he is a capable person from amongst those who are able to fulfil the responsibility, this is necessitated by the pledge of allegiance, since the one who is not

capable would be incapable of running the affairs of the people by the Quran and the *Sunnah* for those who gave him the pledge upon them.

The evidence for that includes:

1. Muslim narrated from Abu Dharr

«قُلْتُ: يَا رَسُولَ اللَّهِ، أَلَا تَسْتَعْمِلُنِي، قَالَ: فَضْرَبَ بِيَدِهِ عَلَى مَنْكِبِي ثُمَّ قَالَ: يَا أَبَا ذَرٍّ، إِنَّكَ ضَعِيفٌ وَإِنَّهَا أَمَانَةٌ، وَإِنَّهَا يَوْمَ الْقِيَامَةِ خِزْيٌ وَنَدَامَةٌ إِلَّا مَنْ أَخَذَهَا بِحَقِّهَا وَأَدَّى الَّذِي عَلَيْهِ فِيهَا»

“I said: O Messenger of Allah, Why don’t you appoint me (to an official position)? He ﷺ patted me on the shoulder with his hand and said, “O Abu Dharr, you are a weak man and it is a trust and it will be a cause of disgrace and remorse on the Day of Resurrection except for one who takes it up with a full sense of responsibility and fulfils what is entrusted to him (discharges its obligations efficiently.)”

This explains that giving the order its due right and performance is only done by those who are capable of it, and the indication that engenders decisiveness is what the Messenger ﷺ said about whoever takes it and is not capable of it

«وَإِنَّهَا يَوْمَ الْقِيَامَةِ خِزْيٌ وَنَدَامَةٌ إِلَّا مَنْ أَخَذَهَا...»

“and on the day of Judgement it will be a disgrace and a regret except for he who takes it”.

2. Al-Bukhari reported from Abu Hurayrah that the Messenger of Allah ﷺ said,

«إِذَا ضَيِّعَتِ الْأَمَانَةُ فَانْتَظِرِ السَّاعَةَ، قَالَ: كَيْفَ إِضَاعَتُهَا يَا رَسُولَ اللَّهِ؟ قَالَ: إِذَا أَسْنَدَ الْأَمْرُ إِلَى غَيْرِ أَهْلِهِ فَانْتَظِرِ السَّاعَةَ»

“When trust (honesty) is lost, then wait for the Hour. It was asked, “How will trust (honesty) be lost, O, Allah’s Prophet?”

He said, “When authority is given to those who not deserve it, then wait for the Hour.”

The narration indicates a decisive prohibition for the guardianship to be placed with one who is not suitable for it. And the decisive indication is that such an act would mean the abandonment of the trust, which is from the signs of the Hour, which is an indication of the enormity of the prohibition of it being undertaken by those not suitable for it.

As for how capability should be defined, this requires establishing the reality since it might be connected to bodily or mental illness, etc. and ,therefore, its definition is left for the *Madhalim* court, which will confirm that the conditions of contracting have been met in the candidates for the *Khilafah*.

Article 32

If the position of the *Khilafah* becomes vacant due to the death of its leader, his resignation or his removal, it is obligatory to appoint a *Khalifah* within three days from the date that the position of the *Khilafah* became vacant.

Appointing the *Khalifah* becomes obligatory from the moment that the previous *Khalifah* dies or is removed. However, it is permitted for the appointment to occur within three days with their nights as long as it is due to working to achieve it. If it takes longer than three nights and the *Khalifah* has still not been appointed, then the issue is considered – if the Muslims are working to establish it but are unable to achieve that during the three night time limit due to overwhelming circumstances that they are unable to overcome, then the sin is lifted from them since they are busy working to establish the obligation and are compelled to delay its establishment due to whatever forced them. It is reported from Ibn Hibban and Ibn Maja from Ibn Abbas: the Messenger of Allah ﷺ said:

«إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنَّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ»

“Verily Allah has pardoned for my Ummah: their mistakes, their forgetfulness, and that which they have been forced to do”.

If they were not made busy with such overwhelming issues, then the most time allowed for the appointment is three days with their nights.

The evidence for the obligation of immediately working to establish the pledge of allegiance (*Bay'a*) to the *Khalifah* due only to the vacation of the position of the *Khalifah* is the *Ijma'* of the companions. They immediately hurried to gather at *Saqifa Bani Sa'idah* after the death of the Messenger ﷺ on the same day and before his ﷺ burial, and the pledge of contracting (*Bay'at Al-In'iqad*) was completed on the same day with Abu Bakr (ra), and the next day the people gathered in the mosque to give the pledge of obedience (*Bay'at Al-ta'ah*).

Limiting the time to establish the appointment of the *Khalifah* to three days is due to that when it became apparent that Umar (ra) was going to die from his stab wound, he delegated the issue of appointment of his successor to the people of *Shura*, and limited them to three days, and then commissioned that if the *Khalifah* was not agreed upon within the three days, those who differed after the three days should be killed. He appointed fifty men from the Muslims in order to execute this - in other words, to kill the dissenter, even though they were from the senior companions, and all of this was seen and heard by the companions and none of them rebuked it even though normally anything similar to it would have been reproachable, so it is considered an *Ijma'* of the companions that it is not permitted for the position of *Khalifah* to be left vacant for more than three days, and the *Ijma'* of the companions is an Islamic evidence in the same manner as the Quran and the *Sunnah*.

Al-Bukhari reported through Al-Miswar Bin Makhramah who said:

«طَرَفَنِي عَبْدُ الرَّحْمَنِ بَعْدَ هَجْعٍ مِنَ اللَّيْلِ، فَضَرَبَ الْبَابَ حَتَّى اسْتَيْقَظْتُ، فَقَالَ أَرَأَيْكَ نَائِمًا، فَوَاللَّهِ مَا اكْتَحَلْتُ هَذِهِ اللَّيْلَةَ بِكَبِيرِ نَوْمٍ»

“Abdur-Rahman called on me after a portion of the night had passed and knocked on my door till I got up, and he said to me, "I see you have been sleeping! By Allah, during the last three nights I have not slept enough". And Ibn Kathir mentioned in the book Al-Bidayah wa 'l-Nihayah

فلما كانت الليلة التي يسفر صباحها عن اليوم الرابع من موت عمر، جاء - عبد الرحمن بن عوف - إلى منزل ابن أخته المسور بن مخرمة فقال: أنائم يا مسور؟ والله لم أغمض بكثير نوم منذ ثلاث ...)

“When the night whose morning would have been the fourth day after the death of Umar, ‘Abd Al-Rahman Bin ‘Auf came to the house of his nephew Al-Miswar Bin Makhramah and said “You are sleeping O Miswar? By Allah I did not get much sleep for the last three” - in other words, the last three nights and when the people prayed the Morning Prayer the pledge with ‘Uthman (ra) was completed.

Article 33

A temporary leader is appointed to take charge of the affairs of the Muslims, and to prepare for the election of the new *Khalifah* after the vacation of the position of the *Khilafah* according to the following process:

- a. When the previous *Khalifah* feels that his life is coming to an end, or is committed to resigning, he has the right to appoint the temporary leader.
- b. If the *Khalifah* dies or resigns before appointing the temporary leader, or the position of the *Khilafah* becomes vacant due to another reason, then the eldest of the assistants becomes the temporary leader unless

he intended to be a candidate for the *Khilafah* in which case the next senior assistant is to be given the position and so on.

- c. If all of the assistants intend to be candidates, then the eldest of the executive ministers will become the temporary leader or the one after him in seniority if he intends to be a candidate, and so on.**
- d. If all of the executive ministers intend to be candidates for the *Khilafah*, then the position of the temporary leader is given to the youngest executive minister.**
- e. The temporary leader does not have the right to adopt rules.**
- f. The temporary leader makes all effort to complete the appointment of a new *Khalifah* within three days, and it is not permitted for this to be extended except due to overwhelming circumstances approved by the *Madhalim* court.**

When the *Khalifah* feels that his death is close, close to the time that the *Khilafah* would become vacant, he may appoint a temporary leader to be responsible for the Muslims' affairs during the period of steps being taken to appoint the new *Khalifah*. He would undertake his work after the death of the *Khalifah* and his main work would be to complete the appointment of the new *Khalifah* within three days.

It is not permitted for the temporary leader to adopt rules, since this is the right of the *Khalifah* who has been given a pledge by the *Ummah*. In the same manner, it is not permitted for him to be nominated for the *Khilafah* or to support the nominees, since Umar (ra) appointed someone other than those who were nominated for the *Khilafah*.

The responsibility of this leader ends with the appointment of the new *Khalifah* since his task was time-constrained to this goal.

The evidence for this is what Umar (ra) did when he was stabbed and this was done without any opposition from the companions and so is considered to be an *Ijma'*.

Umar (ra) said to the six candidates

«وليصلاً بكم صهيب هذه الأيام الثلاثة التي تتشاورون فيها»

“Let Suhayb lead you in prayers during the three days of your consultation” and then he said to Suhaib, as mentioned in *Tarikh Al-Tabari*,

«صل بالناس ثلاثة أيام، إلى أن قال: فإن اجتمع خمسة، ورضوا رجلاً، وأبى

واحد، فاشدخ رأسه بالسيف...»

“lead the people in prayer for three days ..until he said: if five of them agree upon a man while one disagreed, then strike his head with a sword..”. This means that Suhaib was appointed as a leader over them – he was appointed as a leader for the prayer and leadership of the prayer meant leadership over the people. Also, he was given the right to apply the punishment (strike his head) and the only one who can establish punishment by death is the leader.

This issue took place in front of the companions without any dissenters and so it is an *Ijma'* that the *Khalifah* can appoint a temporary leader who undertakes the steps to appoint the new *Khalifah*. In the same manner based upon this it is permitted for the *Khalifah* during his lifetime to adopt an article which would state that if he died without appointing a temporary leader to oversee the appointment of a new *Khalifah*, someone is to be the temporary leader.

Based upon this, it is adopted that if the *Khalifah* did not appoint a temporary leader during his terminal illness, then the temporary leader would be the eldest of his assistants as long as

they are not a candidate, in which case it would be the next senior in age from his assistants, and so on, and then the executive ministers in the same manner.

This is applied in the event of the removal of the *Khalifah*, so the temporary leader would be the eldest assistant as long as he is not a candidate, and if he is a candidate then the next one in seniority and so on until all the assistants are considered, in which case it would then fall to the eldest executive minister and so on. If all of them want to be candidates then the youngest of the executive ministers is compelled to become the temporary leader.

This leader is different from the one the *Khalifah* appoints in his place when he goes out for *Jihad* or a journey, as the Prophet ﷺ used to do when he went out for *Jihad* or the final *Hajj*, or similar. In this situation the one who is delegated in his stead has the powers that the *Khalifah* defines for him to take care of the affairs necessitated by the delegation.

Article 34

The method of appointing the *Khalifah* is the pledge of allegiance (*Bay'a*). The practical steps to appoint the *Khalifah* and his *Bay'a* are:

- a. The *Madhalim* court announces the vacancy of the position of the *Khilafah***
- b. The temporary leader takes control of his responsibility and announces the opening of the nomination procedure immediately**
- c. Applications of the candidates fulfilling the contracting conditions would be accepted, excluding the other applications, by the decision from the *Madhalim* court.**
- d. The candidates who have been accepted by the *Madhalim* court, are then short listed twice by the Muslim members of the *Shura* council: first; they**

select the six candidates who got the highest votes from them, and the second stage is to select the two candidates who got the highest votes

- e. The names of the two are announced and the Muslims are requested to vote for one of them**
- f. The result of the elections is announced and the Muslims are informed of the one that got most of the votes.**
- g. The Muslims promptly set out to give the pledge to whoever got most of the votes, as the *Khalifah* of the Muslims upon the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ.**
- h. Once the pledge has been completed, the *Khalifah* is announced to the public, until the news of his appointment has reached the whole *Ummah*, with mentioning of his name and that he fulfilled the characteristics that make him valid for contracting the *Khilafah* to him.**
- i. After completing the steps to appoint the new *Khalifah* the responsibility of the temporary leader ends.**

When the *Shari'ah* obligated the appointment of a *Khalifah* upon the *Ummah*, it specified the method by which he would be appointed. This method has been defined by the Quran and *Sunnah* and the consensus of the companions. This method is the pledge of allegiance (*Bay'a*). The appointment of the *Khalifah* occurs through the taking of the *Bay'a* of the Muslims upon the action by the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ. What is meant by "Muslims" is those Muslims who were under the responsibility of the last *Khalifah* if the *Khilafah* was established or the Muslims of the area which the *Khilafah* was being established within if it was not already established.

The fact that this method (*Bay'a*) is confirmed by the Muslims' *Bay'a* to the Messenger ﷺ, and from the order of the Messenger ﷺ upon us to give the *Bay'a* to the *Imam*. As for the *Bay'a* of the Muslims to the Messenger ﷺ, it was not a *Bay'a* on Prophethood but rather upon ruling, since it was a *Bay'a* upon action and not upon confirmation (of the truth of his ﷺ Prophethood). So he ﷺ was given the *Bay'a* upon the basis that he was a ruler and not that he was a Prophet or a Messenger, since the confirmation of belief in Prophethood and his ﷺ message is *Iman* and not *Bay'a*. Therefore, all that remains is that the *Bay'a* must have been in respect of him ﷺ being the head of the state. The *Bay'a* is mentioned in the Quran and the *Sunnah*. Allah (swt) says:

﴿يَأَيُّهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يُبَايِعْنَكَ عَلَى أَنْ لَا يُشْرِكْنَ بِاللَّهِ شَيْئًا وَلَا يَسْرِقْنَ وَلَا يَزْنِينَ وَلَا يَقْتُلْنَ أَوْلَادَهُنَّ وَلَا يَأْتِينَ بِبُهْتَانٍ يَفْتَرِينَهُ بَيْنَ أَيْدِيهِنَّ وَأَرْجُلِهِنَّ وَلَا يَعَصِينَكَ فِي مَعْرُوفٍ فَبَايِعْهُنَّ﴾

“O Prophet, when the believing women come to you pledging to you that they will not associate anything with Allah, nor will they steal, nor will they commit unlawful sexual intercourse, nor will they kill their children, nor will they bring forth a slander they have invented between their arms and legs, nor will they disobey you in what is right - then accept their pledge.” (TMQ 60:12), and Allah (swt) says

﴿إِنَّ الَّذِينَ يُبَايِعُونَكَ إِنَّمَا يُبَايِعُونَ اللَّهَ يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ﴾

“Indeed, those who pledge allegiance to you, [O Muhammad] - they are actually pledging allegiance to Allah. The hand of Allah is over their hands.” (TMQ 48:10). Al-Bukhari reported: Isma‘il said that Malik said to me from Yahya b. Sa‘id who said: ‘Ubadah b. Al-Walid said his father said to him from ‘Ubadah b. Al-Samit:

«بَايَعْنَا رَسُولَ اللَّهِ ﷺ عَلَى السَّمْعِ وَالطَّاعَةِ، فِي الْمُنْشَطِ وَالْمَكْرَهِ، وَأَنْ لَا نُنَازِعَ الْأَمْرَ أَهْلَهُ، وَأَنْ نَقُومَ أَوْ نَقُولَ بِالْحَقِّ حَيْثُمَا كُنَّا، لَا نَخَافُ فِي اللَّهِ لَوْمَةً لَانِمِ»

“We gave the oath of allegiance to Allah's Prophet ﷺ that we would listen to and obey him both at the time when we were active and at the time when we were tired and that we would not fight against the ruler or disobey him, and would stand firm for the truth or say the truth wherever we might be, and in the Way of Allah we would not be afraid of the blame of the blamers. ”. And in Muslim from ‘Abd Allah b. Amr b. Al-‘As that the Messenger of Allah ﷺ said:

«... وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفَقَةً يَدِهِ وَتَمَرَةً قَلْبِهِ، فَلْيُطِعهُ إِنْ اسْتَطَاعَ، فَإِنْ جَاءَ آخَرُ يُنَازِعُهُ فَاضْرِبُوا عُنُقَ الْآخَرِ»

“He who swears allegiance to an Imam, he should give him the pledge in ratification and the sincerity of his heart. He should obey him to the best of his capacity. If another man comes forward as a claimant (when one has already been installed), behead the second ”. And also in Muslim from Abu Sa‘id Al-Khudri that the Messenger of Allah said

«إِذَا بُويعَ لِخَلِيفَتَيْنِ فَأَقْتُلُوا الْآخَرَ مِنْهُمَا»

“When oath of allegiance has been taken for two caliphs, kill the one for whom the oath was taken later”. Muslim also reported from Abu Hazem who said: I sat with Abu Huraira for five years, and I heard him say from the Prophet ﷺ

«كَانَتْ بَنُو إِسْرَائِيلَ تَسُوسُهُمُ الْأَنْبِيَاءُ، كُلَّمَا هَلَكَ نَبِيٌّ خَلَفَهُ نَبِيٌّ، وَإِنَّهُ لَا نَبِيَّ بَعْدِي، وَسَيَكُونُ خُلَفَاءُ فَيَكْثُرُونَ، قَالُوا: فَمَا تَأْمُرُنَا؟ قَالَ: فُؤَا بَيْعَةِ الْأَوَّلِ فَلَا أَوَّلَ، أَعْطَوْهُمْ حَقَّهُمْ، فَإِنَّ اللَّهَ سَائِلُهُمْ عَمَّا اسْتَرْعَاهُمْ»

Banu Isra'il were ruled over by the Prophets. When one Prophet died, another succeeded him; but after me there is no

Prophet and there will be caliphs and they will be quite large in number. His Companions said: What do you order us to do (in case we come to have more than one Caliph)? He said: The one to whom allegiance is sworn first has a supremacy over the others. Concede to them their due rights (i. e. obey them). Allah will question them about the subjects whom He had entrusted to them.”

The texts of the Quran and *Sunnah* are explicit that the method to appoint the *Khalifah* is the *Bay'a*. It could also be understood from the consensus of the companions, who acted upon this, and the *Bay'a* to the righteous *Khulafaa'* are clear in this regard.

The practical steps which conclude with the action of the appointment of the *Khalifah* before the giving of the pledge to him are understood from what occurred with the righteous *khulafaa'* who came straight after the death of the Messenger ﷺ. They were Abu Bakr (ra), Umar (ra), 'Uthman (ra) and 'Ali (ra), may Allah be pleased with them. All of the companions were silent upon and consented to the steps taken, even though they were steps which would have been rejected if they contradicted the *Shari'a* since they were connected to the most important issue upon which the Muslim entity rested and the continuity of the ruling by Islam.

Whoever followed what occurred in the appointment of those *Khulafaa'*, they would find that some of the Muslims discussed the issue in *Saqifa Bani Sa'idah* and that the candidates were Sa'd (ra), Abu 'Ubaida (ra), Umar (ra) and Abu Bakr (ra). However, both Umar (ra) and Abu 'Ubaida (ra) did not wish to contest the issue against Abu Bakr (ra), and so the issue was really between Abu Bakr (ra) and Sa'd Bin 'Ubada (ra) and no one else, with the result of the discussion being that the *Bay'a* was given to Abu Bakr (ra). Then on the second day the Muslims were called to the mosque to give him their *Bay'a*, and so the *Bay'a* in *Al-Saqifa* was one of contracting, and with it the person becomes the

Khalifah of the Muslims, and the *Bay'a* in the mosque on the second day is the *Bay'a* of obedience.

When Abu Bakr (ra) felt that his illness was terminal and specifically that the Muslim armies were involved in battles with the major powers of the time, the Persians and the Romans, he called the Muslims in order to consult them upon who should be the *Khalifah* for them and spent three months doing this consultation. When he had completed it and knew the opinion of the majority of the Muslims, he commissioned them, or in modern terminology nominated, that Umar (ra) should be the *Khalifah* after him. This commissioning or nomination was not a contract for Umar (ra) to be the *Khalifah* after him, since after the death of Abu Bakr (ra) the Muslims attended the mosque to give their *Bay'a* to Umar (ra) and through that he became the *Khalifah* of the Muslims, and not through the consultations, or Abu Bakr's (ra) commission, since if the nomination by Abu Bakr (ra) was a contract for the *Khalifah* then he would not have required the *Bay'a* of the Muslims. This is on top of the texts mentioned earlier which explicitly indicate that the only manner for a person to become the *Khalifah* is through the *Bay'a* given by the Muslims.

At the time that Umar (ra) was stabbed the Muslims requested that he appoint a successor which he refused to do. They pressed upon him and so he made, or nominated, six candidates for them, after which he appointed Suhayb to lead the people in prayer and to prevail upon those whom Umar (ra) had nominated until they decided upon a *Khalifah* from amongst themselves during the three days he had specified for them. He said to Suhayb

«... فإن اجتمع خمسة، ورضوا رجلاً، وأبى واحد، فاشدخ رأسه أو اضرب

رأسه بالسيف...»

“if five of them agreed upon a man while one disagreed, then strike his head with a sword..” as has been reported by Al-Tabari in his *Al-Ta'rikh*, as well as Ibn Qutaybah who authored

the book *Al-Imama wa 'l-Siyasa* which is commonly known by *Al-Ta'rikh Al-Khulafaa*, and Ibn Sa'd in *Al-Tabaqat Al-Kubra*. Then Umar (ra) appointed Abu Talha Al-Ansari along with fifty men to guard them, and charged Al-Miqdad Bin Al-Aswad with finding a place for them to meet. Then after the death of Umar (ra) and subsequent to the council settling upon the candidates, 'Abd al Rahman Bin 'Auf said: Which of you would remove yourselves (from consideration) and assume responsibility to select the best of you? To which all of them remained silent. Then 'Abd al Rahman said I remove myself and then consulted each of them individually asking them who they considered the most worthy of the responsibility if they didn't consider themselves, and he found that their answers were limited to two: 'Ali (ra) and 'Uthman (ra). After that 'Abd al Rahman sought the opinions of the Muslims asking them which of the two they would prefer. He asked the men and women, surveying the opinion of the people, not just during the daytime but even during the night. Al-Bukhari narrated from Al-Miswar Bin Makhrama who said

«طَرَفَنِي عَبْدُ الرَّحْمَنِ بَعْدَ هَجْعٍ مِنَ اللَّيْلِ، فَضَرَبَ الْبَابَ حَتَّى اسْتَيْقَظْتُ، فَقَالَ أَرَأَيْكَ نَائِمًا، فَوَاللَّهِ مَا اكْتَحَلْتُ هَذِهِ اللَّيْلَةَ بِكَبِيرِ نَوْمٍ»

“Abdur-Rahman called on me after a portion of the night had passed and knocked on my door till I got up, and he said to me, "I see you have been sleeping! By Allah, during the last three nights I have not slept enough”. After the people had offered morning prayer, Bay'a of 'Uthman (ra) was completed. He became the *Khalifah* through the Bay'a of the Muslims, and not because Umar (ra) limited it to six. Then 'Uthman (ra) was killed, and so the masses of the Muslims in Madinah and Kufa gave their Bay'a to 'Ali b. Abi Talib (ra), and so he became the *Khalifah* through the Bay'a of the Muslims.

By close examination of the manner of their Bay'a, it becomes clear that the candidates for the *Khilafah* were announced to the people and that they all fulfilled the necessary conditions of

contracting. After this the opinion of the influential people (*Ahl Al hal Wal- 'Aqd*) from the Muslims was taken, the representatives of the *Ummah*, and the representatives were well known in the era of the righteous *Khulafaa'* since they were the companions, may Allah be pleased with them, or the people of Madinah. Whoever the companions, or the majority of them, wanted to become *Khalifah* was given the *Bay'a* of contracting, and thus became the *Khalifah* to whom obedience was obligatory, and so the Muslims would give them the *Bay'a* of obedience. In this manner the *Khalifah* is found and becomes the authorised representative of the *Ummah* in ruling and authority.

As for the issue of limiting the candidates, then by following the manner in which the righteous *Khulafaa'* were appointed, it becomes clear that the candidacy was limited. In *Saqifa Bani Sa'idah* the candidates were Abu Bakr (ra), Umar (ra), Abu 'Ubaida (ra) and Sa'd Bin 'Ubada (ra) and that was all, though Umar (ra) and Abu 'Ubaydah (ra) didn't wish to compete against Abu Bakr (ra) and so in practical terms the candidates were Abu Bakr (ra) and Sa'd Bin 'Ubada (ra). Then the *Ahl Al Hal Wal- 'Aqd* elected Abu Bakr (ra) the *Khalifah* in *Al-Saqifa* and gave him the *Bay'a* of contracting, and the next day the Muslims gave Abu Bakr (ra) the *Bay'a* of obedience in the mosque.

Abu Bakr (ra) nominated Umar (ra) as the *Khalifah* for the Muslims, without there being any other candidate, and then the Muslims gave him the *Bay'a* of contracting and then the *Bay'a* of obedience.

Umar (ra) nominated six candidates for the Muslims and told them to elect the *Khalifah* from amongst themselves, then 'Abd Al-Rahman b. 'Awf discussed with five of them and limited them to two: 'Ali (ra) and 'Uthman (ra), after the others had charged him to do. After that he surveyed the opinion of the people and that opinion settled upon 'Uthman (ra) as the *Khalifah*.

As for ‘Ali (ra), there was no other candidate for the *Khilafah* and so the masses of the Muslims in Madinah and Kufa gave him the *Bay’a* and he became the fourth *Khalifah*.

And due to the *Bay’a* of ‘Uthman (ra) being settled within the maximum permitted time to elect the *Khalifah* – three days and nights – and also that the candidates were limited to six and then after that to two, we will mention how that occurred with the details in order to understand the issue we are discussing:

1. Umar (ra) died on Sunday morning in Muharram 24 A.H. from the effects of being stabbed by Abu Lu’lu’a, may Allah (swt) curse him, when Umar (ra) was standing in prayer in the pulpit of the mosque during the Wednesday morning prayer four days before the end of Dhul Hijja 23 A.H. Suhayb led the prayer for him in accordance with his will.
2. When they had completed the issue of Umar (ra), Al-Miqdad gathered the council of six which had been entrusted by Umar (ra) in one of the houses and Abu Talha took care of their needs. They sat therein and discussed and then appointed Abd Al-Rahman b. ‘Awf to select the *Khalifah* from amongst them with their consent.
3. ‘Abd Al-Rahman began to discuss with them and he asked each of them: If he was not to be the *Khalifah* then who did he think should be from amongst the others? Their answers were limited to ‘Ali (ra) and ‘Uthman (ra), and so Abd Al-Rahman limited the candidacy to two from the original six.
4. After that Abd Al-Rahman began to consult the people as is well known.
5. On Tuesday night - in other words, the night of the third day after the death of Umar (ra) on Sunday, Abd Al-Rahman went to the house of his nephew Al-Miswar Bin

Makhramah. The following is taken directly from *Al-Bidayah Wal-Nihayah* of Ibn Kathir:

(فلما كانت الليلة التي يسفر صباحها عن اليوم الرابع من موت عمر، جاء
- أي عبد الرحمن بن عوف - إلى منزل ابن أخته المسور بن مخرمة فقال: أناثم يا
مسور؟ والله لم أغتمض بكثير نوم منذ ثلاث ...)

“When the night whose morning was the fourth day after the death of Umar, Abd Al-Rahman b. ‘Awf came to the house of his nephew Al-Miswar Bin Makhrama and said “You are sleeping O Miswar? By Allah, I did not get much sleep for the last three (nights)” in other words, the last three nights after the death of Umar (ra) which occurred on Sunday morning, which was Sunday, Monday and Tuesday night – until he said

(إذهب فادع إليّ علياً وعثمان ... ثم خرج بهما إلى المسجد ... ونودي
في الناس عامة: الصلاة جامعة ...)

“Go and summon ‘Ali and ‘Uthman for me...then he went out with them to the mosque...the people were summoned: the prayer will be held in congregation”, which was the Wednesday morning prayer. Then he took Ali’s (ra) hand, may Allah (swt) be pleased with him and honour his face, and asked him regarding taking the *Bay’a* upon the Book of Allah (swt), the *Sunnah* of His Messenger ﷺ and the actions of Abu Bakr (ra) and Umar (ra). ‘Ali (ra) famously replied: upon the Book and the *Sunnah* – yes. As for the actions of Abu Bakr (ra) and Umar (ra), he would make his own *Ijtihad*. Abdul Rahman removed his hand, took the hand of ‘Uthman (ra) and asked the same question. ‘Uthman (ra) replied: By Allah yes, and so the *Bay’a* was completed with ‘Uthman (ra).

Suhayb led the people in the morning and midday prayer that day, and then ‘Uthman (ra) led them in the afternoon prayer as the *Khalifah* of the Muslims. This means that despite the contracting *Bay’a* to ‘Uthman (ra) starting at the Morning Prayer,

the leadership of Suhayb did not expire except after the *Bay'a* of the influential people in Madinah to 'Uthman (ra). This was completed a little before the afternoon prayer, where the companions summoned each other to give *Bay'a* to 'Uthman (ra) until after the middle of that day had passed and before the afternoon prayer. When the taking of the *Bay'a* was completed before the afternoon prayer, the leadership of Suhayb finished, and 'Uthman (ra) led the people in the afternoon prayer as their *Khalifah*.

The author of *Al-Bidayah Wal-Nihayah* explains why Suhayb led the people in the afternoon prayer though 'Uthman (ra) took the *Bay'a* at the morning prayer, saying: "The people gave him the *Bay'a* in the mosque, then he was taken to the house of *Shura* (i.e. the house where the people of consultation met), so the rest of the people gave him the *Bay'a*. It seems he did not finish taking the *Bay'a* until after the midday prayer. So, Suhayb prayed that prayer in the Prophet's mosque, thus the first prayer in which the *Khalifah*, leader of the believers 'Uthman (ra) led the Muslims was the afternoon prayer".

Consequently the following matters must be considered when making nominations for the post of *Khilafah* after it becomes vacant (through death or dismissal), which are:

1. The work regarding candidacy and appointment must be done day and night until the task is completed.
2. Nominees have to be short listed in terms of fulfilling the contractual conditions, a matter that is conducted by the *Madhalim* court.
3. Nominees are short listed twice: to six and then to two. The council of the *Ummah* conducts this short listing as representatives of the *Ummah*. This is because the *Ummah* delegated Umar (ra) to represent them, who nominated six people and the six nominees delegated a representative from amongst themselves, 'Abd al Rahman, who short listed the nominees to two after discussion. Thus, the

reference in all of this is the *Ummah*'s council; in other words, its representatives.

4. After the completion of the elections and the *Bay'a*, the *Khalifah* is announced to the public such that all of the *Ummah* are aware of it, and his name and characteristics that mean he fulfils the criteria for the contraction of the *Khilafah* are also mentioned.
5. The task of the temporary leader expires after the completion of the taking of the *Bay'a* by the *Khalifah*, rather than by the announcement of the results. The leadership of Suhayb did not finish by the election of 'Uthman (ra), but rather by the completion of his *Bay'a*.

This is the case if there was a *Khalifah* and he passed away or was removed and a *Khalifah* needs to be appointed to replace him.

If there is no *Khalifah* at all, it becomes obligatory upon the Muslims to appoint a *Khalifah*, to implement the rules of the *shari'a* and to carry the Islamic call to the world, as is currently the case since the removal of the Islamic *Khilafah* in Istanbul, on 28th Rajab 1342 AH (3rd March 1924). In such a situation, every one of the Muslim countries in the Islamic world is suitable to appoint a *Khalifah*, and the *Khilafah* would be contracted to him. So, if one of the Muslim countries gave the *Bay'a* to a *Khalifah*, and the *Khilafah* was contracted to him, it becomes obligatory upon the Muslims in the other countries to give him the *Bay'a* of obedience or in other words, a *Bay'a* of submission to his authority. This is after the *Khilafah* has been concluded to him through the *Bay'a* of the people of his country. The following four conditions have to be fulfilled in that country:

1. The authority of the country must be in the hands of the Muslims and not in the hands of a non-Islamic country or under a non-Islamic influence.

2. The security of the Muslims in that country must be guaranteed by Islam; in other words, its protection at home and abroad should be in the name of Islam and by Islamic forces to the exclusion of all others.
3. The implementation of Islam should take place with immediate effect in a comprehensive and radical manner; the *Khalifah* must be involved in the conveying of the call to Islam.
4. The *Khalifah* must fulfil all the contractual conditions, although he might not fulfil the preferred conditions, since what matters are the conditions of the contract.

Should that country satisfy these four conditions then the *Khalifah* would be established by the *Bay'a* of that country alone, and the *Khalifah* would be concluded by it alone. The *Khalifah* to whom they gave the *Bay'a* would become the legitimate *Khalifah* and any *Bay'a* to other than him would be invalid.

Any country that might give the *Bay'a* to another *Khalifah* after that, then their *Bay'a* would be invalid, due to the saying of the Messenger of Allah ﷺ

«إِذَا بُويعَ لِخَلِيفَتَيْنِ فَأَقْتُلُوا الْآخَرَ مِنْهُمَا»

“When oath of allegiance has been taken for two caliphs, kill the one for whom the oath was taken later” and his ﷺ saying

«... فُؤَا بَيْعَةِ الْأَوَّلِ فَالْأَوَّلِ»

“Fulfil the Bay'a (oath of allegiance) of the first, then the first” and his ﷺ saying

«وَمَنْ بَايَعَ إِمَامًا فَأَعْطَاهُ صَفَقَةً يَدِهِ وَتَمَرَةً قَلْبِهِ، فَلْيُطِعهُ إِنْ اسْتَطَاعَ، فَإِنْ

جَاءَ آخَرُ يُنَازِعُهُ فَاصْرُبُوا عَنْقَ الْآخَرِ»

“He who swears allegiance to an Imam, he should give him the pledge in ratification and the sincerity of his heart. He

should obey him to the best of his capacity. If another man comes forward as a claimant (when one has already been installed), behead the second”

The method of the Bay’a: In the aforementioned we have explained the evidences for the Bay’a as the prescribed method of appointing a *Khalifah* in Islam. Regarding its practical implementation, it is through shaking the hand as well as by writing. It has been narrated by ‘Abd Allah b. Dinar who said: ***“I witnessed Ibn Umar when people agreed on Abd Al-Malik b. Marwan saying:***

«كتب أبي أقر بالسمع والطاعة لعبد الله عبد الملك أمير المؤمنين على كتاب الله
وسنة رسوله ما استطعت»

“I write herewith that I swear allegiance to listen to and obey ‘Abd Allah Abd Al-Malik, the leader of the believers, in accordance with the Book of Allah and the Sunnah of His Messenger, to the best of my ability”. The Bay’a can also be given by any other means.

The Bay’a should only be given by an adult as the Bay’a of the minor is not valid. Abu Aqeel Zahrah b. Ma‘bad reported on the authority of his grand-father ‘Abd Allah b. Hisham who lived during the time of the Messenger of Allah ﷺ, that his mother Zaynab bint Hamid took him to the Messenger of Allah ﷺ and said “O Messenger of Allah, take Bay’a from him” upon this the Messenger of Allah ﷺ said

«هُوَ صَغِيرٌ، فَمَسَحَ رَأْسَهُ وَدَعَا لَهُ»

“He is young” and he ﷺ wiped over his head and prayed for him, as narrated by Al-Bukhari.

As for the wording of the Bay’a, it is not restricted to any specific wording, but it should include the commitment that the *Khalifah* acts according to the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ and that the person who gives the

Bay'a should pledge to obey in that which they liked and disliked and in ease and hardship. A law will be published that will determine this wording in accordance with the previous points.

Once the *Bay'a* is given to the *Khalifah*, then the *Bay'a* becomes a trust on the neck of the one who gave the *Bay'a*, where he is not allowed to withdraw it. For it is his right in terms of appointing the *Khalifah* until he gives it. But once he gave it, he is not allowed to withdraw it. Even if he wanted to do so, he is not permitted to withdraw his *Bay'a*. Al-Bukhari narrated from Jabir Ibn 'Abd Allah that a Bedouin gave the *Bay'a* to the Messenger of Allah ﷺ on Islam, but he became unwell, so he said:

«أَقْلِبِي بَيْعِي»

“*Relieve me of my Bay'a (cancel my pledge)*”, which the Messenger of Allah ﷺ refused. Then he came and said the same, but the Messenger ﷺ rejected. So he left the town. The Messenger of Allah ﷺ said

«إِنَّمَا الْمَدِينَةُ كَالْكَبِيرِ تَنْفِي خَبَثَهَا وَيَنْصَعُ طَيِّبَهَا»

“*Madina is like the blacksmith's furnace. It removes the impurities and purifies the good.*”

Muslim also narrated from Nafi' on the authority of 'Abd Allah b. Umar that he heard the Messenger of Allah ﷺ say

«مَنْ خَلَعَ يَدًا مِنْ طَاعَةٍ، لَقِيَ اللَّهَ يَوْمَ الْقِيَامَةِ لَا حُجَّةَ لَهُ»

“*One who withdraws his hand from obedience (to the Amir) will find no argument (in his defense) when he stands before Allah on the Day of Resurrection*”.

Breaking the *Bay'a* to the *Khalifah* is a withdrawal of the hand from the obedience to Allah (swt). However, this is the case if his *Bay'a* to the *Khalifah* was a *Bay'a* of contracting, or a *Bay'a* of obedience to a *Khalifah* was accepted and pledged by the Muslims. But if he pledged himself to a *Khalifah* initially, and the

Bay'a was not completed, then he has the right to relieve himself from that *Bay'a*, in view of the fact that the contracting *Bay'a* has not been concluded to him from the Muslims. So the prohibition in the hadith is focused on withdrawing a *Bay'a* to a *Khalifah*, not to a man for whom the *Khilafah* contract was not completed.

Article 35

The *Ummah* is the one who appoints the *Khalifah*. However, it does not possess the right to remove him once the pledge of allegiance has been concluded according to the *Shari'ah* method.

This article has two halves; the first that the *Ummah* is the one who holds the right to appoint the *Khalifah*; the second being that the *Ummah* does not possess the right to remove him.

As for the first half, the proof for it is the narrations regarding the pledge of allegiance, since no one possesses the right to undertake the position of the *Khilafah* except through the pledge, because the pledge is the method to appoint the *Khalifah*. This is established from the pledge of the Muslims to the Messenger ﷺ and from the command of the Messenger ﷺ for us regarding the pledge, and that the righteous *Khulafaa'* only undertook the *Khilafah* through the pledge of allegiance.

With respect to the second half, its evidence is the order to obey the *Khalifah* even if he commits something reproachable, or is oppressive, as long as it is not a clear disbelief. It is narrated by Muslim from Ibn 'Abbas that the Messenger of Allah ﷺ said

«مَنْ رَأَى مِنْ أَمِيرِهِ شَيْئًا يَكْرَهُهُ فَلْيَصْبرْ، فَإِنَّهُ مَنْ فَارَقَ الْجَمَاعَةَ شِبْرًا فَمَاتَ
فَمَيِّتَةً جَاهِلِيَّةً»

“One who found in his Amir something which he disliked should hold his patience, for one who separated from

the main body of the Muslims even to the extent of a handspan and then he died would die the death of one belonging to the days of Jahiliyya.”, and the word “his Amir” is general, and the Khalifah falls under it since he is the Amir of the believers. And in the narration of Yazid b. Salamah Al-Ju’fi in Tabarani in which he said: “O Prophet of Allah, what do you think if we have rulers who rule over us and demand that we discharge our obligations towards them, but they (themselves) do not discharge their own responsibilities towards us? What do you order us to do? The Messenger of Allah ﷺ avoided giving any answer. Salama asked him again. He ﷺ (again) avoided giving any answer. Then he asked again-it was the second time or the third time-when Ash'ath b. Qais pulled him aside and said:

«اسْمَعُوا وَأَطِيعُوا فَإِنَّمَا عَلَيْكُمْ مَا حُمِّلُوا وَعَلَيْكُمْ مَا حُمِّلْتُمْ»

Listen to them and obey them, for on them shall be their burden and on you shall be your burden”.

Al-Bukhari and Muslim reported (with the wording here from Muslim) through ‘Ubadah b. Samit who said:

«دَعَانَا رَسُولُ اللَّهِ ﷺ فَبَايَعَنَا فِي مَا أَخَذَ عَلَيْنَا أَنْ بَايَعَنَا عَلَى السَّمْعِ وَالطَّاعَةِ فِي مَنْشَطِنَا وَمَكْرَهِنَا وَعُسْرِنَا وَيُسْرِنَا وَأَثَرَةٍ عَلَيْنَا وَأَنْ لَا نُنَازِعَ الْأَمْرَ أَهْلَهُ قَالَ: إِلَّا أَنْ تَرَوْا كُفْرًا بَوَاحًا عِنْدَكُمْ مِنَ اللَّهِ فِيهِ بُرْهَانٌ»

“The Prophet ﷺ called us and we gave him the Pledge of allegiance for Islam, and among the conditions on which he took the Pledge from us, was that we were to listen and obey (the orders) both at the time when we were active and at the time when we were tired, and at our difficult time and at our ease and to be obedient to the ruler and give him his right even if he did not give us our right, and not to fight against him unless we noticed him having open Kufr (disbelief) for which we would have a proof with us from Allah” And it is narrated from Abu Dharr that the Messenger of Allah ﷺ said,

«يَا أَبَا ذَرٍّ، كَيْفَ أَنْتَ عِنْدَ وُلاَةٍ يَسْتَأْثِرُونَ عَلَيْكَ بِهَذَا الْفَيْءِ؟ قَالَ: وَالَّذِي بَعَثَكَ بِالْحَقِّ، أَضَعُ سَيْفِي عَلَى عَاتِقِي فَأَضْرِبُ بِهِ حَتَّى أَلْحَقَكَ، قَالَ: أَفَلَا أَدُلُّكَ عَلَى خَيْرٍ لَكَ مِنْ ذَلِكَ؟ تَصْبِرُ حَتَّى تَلْقَانِي»

“O Abu Dharr, how would you act with those governors who would take sole possession of this booty?” He said “By the One who sent you with the Truth, I would place my sword over my shoulder and then fight until I meet with you (die)”. He ﷺ said, “Should I not tell you what is better than that? Have patience until you meet me” (reported by Ahmed and authenticated by Al-Zain, and it is also reported by Abu Dawud).

In all of these narrations the *Khalifah* acted in a way that would mandate his removal and despite that the Messenger ﷺ ordered obedience to him and to be patient over his oppression, which indicates that the *Ummah* does not have the right to remove the *Khalifah*.

Additionally, the Messenger ﷺ refused to allow the Bedouin to cancel his pledge of allegiance. It is narrated by Jabir Bin ‘Abd Allah that a Bedouin gave the pledge of allegiance to the Messenger of Allah ﷺ and then became ill and so said, “Cancel my pledge”, so he ﷺ refused. Then he returned and said, “Cancel my pledge”, so he ﷺ refused. So the man left. The Messenger ﷺ said

«إِنَّمَا الْمَدِينَةُ كَالْكَبِيرِ تَنْفِي خَبَثَهَا وَيَنْصَعُ طَيِّبُهَا»

“Madina is like the blacksmith's furnace. It removes the impurities and purifies the good.” which indicates that if the pledge is given it is binding upon those who gave it and which means they do not have the right to remove the *Khalifah* since they do not have the right to cancel their pledge of allegiance to him. It cannot be argued that the Bedouin wanted to leave Islam and not just the obedience to the ruler through his cancellation of the pledge of allegiance. This cannot be justified since if he did

that then his action would have been one of apostasy and the Messenger ﷺ would have killed him, because the apostate is killed. Also, the pledge is not a pledge upon Islam but rather a pledge upon obedience. Accordingly he wanted to remove himself from the obedience and not from Islam. Consequently, it is not correct for the Muslims to turn away from their pledge and so they do not possess the right to remove the *Khalifah*.

However, the *Shari'ah* clarifies at what point the *Khalifah* removes oneself without a need to be removed, and when he deserves to be removed, and none of these mean that the *Ummah* has the right to remove him. Rather they account him with the powerful word of truth against oppression and fight against him if he announces clear disbelief. The power to remove him when he deserves it is held by the *Madhalim* court.

Article 36

The *Khalifah* possesses the following powers:

- a. He is the one who adopts the *Shari'ah* rules derived by a correct *Ijtihad* from the Book of Allah (swt) and the *Sunnah* of his Messenger ﷺ necessary for managing the affairs of the *Ummah* so that they become laws (*Qawanin*) which are obligatory to obey, and it is not permitted to oppose them.**
- b. He is responsible for governing the domestic and foreign affairs of the State, and he takes command of the Army; he has the right to announce war, to sign peace treaties, truces and all other types of agreements.**
- c. He is the one who can accept or reject foreign ambassadors and appoint and remove the Muslim ambassadors.**

- d. He is the one who appoints and removes the assistants and governors. They are all responsible to him as they are responsible to the *Shura* council.
- e. He is the one who appoints and removes the head judge and judges with the exception of the *Madhalim* judge in the event of his looking into a case regarding the *Khalifah*, his assistants or his head judge. He also has the power to appoint and remove the department managers, the commanders of the army, and its generals. All of these are responsible to him and not to the *Shura* council.
- f. He is the one who adopts the *Shari'ah* laws according to which the budget of the State is decided, beside the sections of the budget and the amounts allocated to each aspect, irrespective to whether it was related to revenue or expenditure.

With respect to the detailed evidences for the six paragraphs mentioned in the article:

The evidence for paragraph “a” is the *Ijma'* of the companions, since the law (*Qanun*) is a technical term which means: The command which is issued by the authority in order to govern the people according to it; and it is also known as “the collection of rules which the authority imposes upon people to follow in their relations”, in other words, if the authority orders specific rules, these rules are laws which the people are bound by, and if the authority did not order them then they are not considered laws and the people are not bound by them. The Muslims act according to the rules of the *Shari'ah* and ,therefore, they act according to the orders and prohibitions of Allah (swt) and not the orders and prohibitions of the authority. So they act according to the rules of the *Shari'ah* and not the orders of the authority. But, these *Shari'ah* rules were differed over by the companions, so some of them understood something from the

Shari'ah texts whereas others understood something different from them, and each of them proceeded according to what they had understood, and their understanding would be the rule of Allah (swt) for them.

However, there are *Shari'ah* rules that the Muslims would all have to proceed according to one opinion in order to facilitate the management of the affairs of the *Ummah*, as opposed to each one following their own *Ijtihad*. This actually happened; Abu Bakr (ra) thought that the wealth should be distributed amongst the Muslims equally, since it was their right collectively. As for Umar (ra), he thought that it was not correct to give the one who had previously fought against the Messenger of Allah ﷺ the same as the ones who had fought alongside him, or to give the poor the same as the rich. However, Abu Bakr (ra) was the *Khalifah* and so ordered the implementation of his opinion, in other words, the adoption of the equal distribution of the wealth. The Muslims followed his opinion and the judges and governors acted according to it, and Umar (ra) submitted to the opinion of Abu Bakr (ra) and he acted according to it and implemented it. When Umar (ra) then became the *Khalifah*, he adopted an opinion which contradicted the opinion of Abu Bakr (ra); in other words, he ordered his opinion which was to distribute the wealth according to preference rather than equally. Therefore, he distributed the wealth according to those who embraced Islam earlier and according to need and the Muslims followed his opinion and the judges and governors acted according to it. So, there was an *Ijma'* of the companions that the *Imam* could adopt specific rules and order their enactment, and that it was upon the Muslims to obey that even if it went against their own *Ijtihad*, and they had to leave acting according to their own opinions and *Ijtihad*. These adopted rules are the laws. Consequently, the passing of laws is for the *Khalifah* alone and no one else possesses that right at all.

As for paragraph “b”, its proof is the action of the Messenger of Allah ﷺ since he was the one who used to appoint the governors and the judges and account them, and he was the one

who used to monitor the buying and selling, and prohibit cheating, and distribute the wealth amongst the people. He ﷺ was also the one who used to help the one who was unemployed to find work and used to undertake all the domestic affairs of the State. In the same way, he ﷺ used to address the Kings, meet the messengers and the delegations, and used to undertake all the foreign affairs of the State. Additionally, he ﷺ used to practically undertake the leadership of the Army and so in the battles he would personally take leadership of the fighting. He ﷺ was the one who sent the expeditions out and appointed their leaders. This was to the extent that he appointed Usama Bin Zaid as a leader over an expedition in order to send it to the land of *As-Sham*, even though the companions disapproved due to his young age, but the Messenger ﷺ forced them to accept his leadership. This indicates that the *Khalifah* is the practical leader of the Army, and not merely the Commander in Chief alone. Additionally, it was the Messenger ﷺ who declared the wars against the Quraysh, Bani Quraythah, Bani Al-Nadir, Bani Qaynuqa', Khaybar and the Romans. Every war which occurred was declared by the Messenger ﷺ, which indicates that the declaration of war is only for the *Khalifah*. He ﷺ also contracted treaties with the Jews, and with Bani Mudlij and their allies from Bani Damrah, and he was the one who concluded the treaties with Yuhannatu b. Ruba, the companion of Ayla. He ﷺ concluded the treaty of Hdaybiyah even though the Muslims were angry with it, but he did not refer to them and rejected their opinions and signed the treaty. All of which indicates that the *Khalifah* alone is the one who concludes the treaties, irrespective of whether it was a peace treaty or any other kind of agreement.

As for paragraph "c", its evidence is that the Prophet ﷺ met the messengers of Musailama, and met Abu Raafi' as a messenger from the Quraysh; he ﷺ was the one who sent messengers to Heracles, Caesar, Al-Maqawqis (of Egypt), Al-Harith Al-Ghassani the king of Al-Hira, Al-Harith Al-Himiari the king of Yemen and to Najashi of the Abyssinians. He ﷺ sent 'Uthman

Bin ‘Affan (ra) at Hudaibiyah as a messenger to the Quraysh. All of this indicates that the *Khalifah* is the one who accepts or rejects to meet the ambassadors and is the one who appoints them.

With respect to paragraph “d”, the Messenger ﷺ used to appoint the governors; he appointed Mu’adh as a governor over Yemen. He ﷺ was the one who used to remove the governors; he removed Al-‘Alaa Bin Al-Hadrami from Bahrain. Also, the reason why he removed Al-‘Alaa was due to the complaints of the people about him, which indicates that the governors are held responsible in front of the people they are governing in the same way they are held responsible in front of the *Khalifah* and in front of the *Shura* council since it represents all of the provinces. This is with respect to the governors. As for assistants, the Prophet ﷺ used to have two assistants, Abu Bakr (ra) and Umar (ra), and he did not remove them nor appoint anyone other than them throughout his life. So he ﷺ was the one who appointed them and did not remove them. However, since the assistant only takes his authority from the *Khalifah*, and he is his representative, then the *Khalifah* would have the right to remove him, proven by analogy to the one given proxy, since the one who gave proxy to someone has the right to remove it, unless there is a narrated text which prohibits removing him in special circumstances.

The proof for paragraph “e” is that the Messenger ﷺ made Ali (ra) the judge for Yemen and in *Al-Isti’ab* that the Messenger ﷺ appointed Mu’ath Bin Jabal as judge over Al-Janad, a province in Yemen.

Umar (ra) used to appoint and remove the judges; he appointed Shuraih as a judge over Kufa and Abu Musa as a judge over Basra, while he removed Sharahbeel Bin Hasana from his governorship over *As-Sham*, and appointed Mu’awiyah. So Sharahbeel said to him ***“Did you remove me due to cowardice, or treachery?”*** He replied ***“Neither of them, but I avoided embarrassment to appoint you while there is a man who is more powerful than you”*** as it was reported in the *Musannaf* of Abdul Razzaq. ‘Ali (ra) appointed Abu Aswad and then removed him,

and so he asked *“Why did you remove me and I did not betray you nor committed a crime”*, so ‘Ali replied *“I saw that you would disregard those who dispute in front of you”*. Both Umar (ra) and ‘Ali (ra) did this within the sight and hearing of the companions, and none of them rebuked them over this. This is therefore, all evidence that the *Khalifah* has the right to appoint judges generally, and in the same way to appoint someone else to appoint the judges, analogous to appointing a proxy, since he is able to deputise all his mandatory powers to anyone in the same way that he is permitted to appoint anyone as a proxy for him in everything that he is permitted to carry out.

As for making an exception for the removal of the *Madhalim* judge while investigating a case raised against the *Khalifah* or his assistant or his head judge, this is due to the *Shari’a* rule *“the means to something forbidden is also forbidden”*, since giving the power to the *Khalifah* to remove him in this situation means that there would be an influence on the verdict of the judge, and additionally it would prevent an Islamic ruling, which is *Haram*. Placing the power to remove the *Madhalim* judge in the hands of the *Khalifah* is a means to this *Haram*, and especially since this rule relies upon most probably doubt and not certainty. For that reason the power to remove the *Madhalim* judge in this instance is left with the *Madhalim* court, and in other circumstances the rule remains on its origin which is that the right to appoint and remove belongs to the *Khalifah*.

With respect to the appointment of the department managers, the Messenger ﷺ used to appoint registrars to administer the affairs, and they were equivalent to department managers. Al-Harith b. ‘Awf was appointed in charge of his ﷺ seal; Mu’ayqib b. Abi Fatimah was appointed as registrar of the war booty; Huthaifa Bin Al-Yemaan used to register the yield of the crops in the Hijaz; Al-Zubayr b. Al-‘Awwam used to register the *Zakat*; and Al-Mugheera Bin Shu’ba used to register the debts and transactions, and so on.

As for the commanders of the Army, and the standard bearers, the Messenger ﷺ appointed Hamza Bin Abdul Muttalib (ra) as a commander over thirty men in order to impede the Quraysh along the sea shore. ‘Ubaydah Ibn Al-Harith (ra) was appointed over sixty men and was sent to the Raabigh valley to face the Quraysh. Sa’ad Bin Abi Waqqas (ra) was appointed over twenty men and was then sent in the direction of Makkah. In the same manner he ﷺ used to appoint the commander of the Army, all of which indicates that the *Khalifah* is the one who appoints the commanders and standard bearers.

All of these were responsible to the Messenger ﷺ, and were not responsible to anyone else, thus indicating that the judges, department managers, commanders of the Army and the rest of the civil servants are not responsible except to the *Khalifah*, and they are not responsible to the *Shura* council. No one is responsible to the *Shura* council except for the assistants and governors, and in the same way the administrators, since they are all types of rulers. Other than these, no one else is responsible in front of the *Shura* council; rather they are all responsible in front of the *Khalifah*.

As for paragraph “f”, the various sections of revenues and expenditure of the budget of the State are limited by the *Shari’ah* rules, so no one is given a single *Dinar* unless it is due to them from a *Shari’ah* rule, and not a single *Dinar* is spent except according to the *Shari’ah* rule. However, the details of the expenditures, or what is known as the sections of the budget, are decided according to the opinion and *Ijtihad* of the *Khalifah*, and the same applies to the revenues. For example, he would decide that the tax from the *Kharajiyyah* land would be x amount, and that the *Jizya* to be taken should be y amount, and similar to these are the sections of the revenues. He is the one who would decide that x amount should be spent upon the roads, and y amount upon the hospitals, and so on across all the sections of the budget. Therefore, it is referred to the opinion of the *Khalifah*, and the *Khalifah* is the one to decide according to his opinion and *Ijtihad*.

This is since the Messenger ﷺ was the one who took the revenues from the administrators, and would take charge of how it was spent; some of the governors were given the permission to collect the revenues such as when Mu'adh b. Jabal was appointed governor over Yemen. After that, each of the righteously guided *Khulafaa'* individually in their capacity as the *Khalifah* used to take the revenues and spend them according to their opinion and *Ijtihad*, and no one rebuked them over this. There was no one other than the *Khalifah* who would act independently with respect to collecting a single *Dinar* and no one would spend it unless he had permission from the *Khalifah* to do so, as what happened in Umar's (ra) appointment of Mu'awiyah who was given a general governorship and so could collect and spend the revenues. All of this indicates that the sections of the budget of the State are drafted by the *Khalifah* alone, or by someone deputised by him.

These are the detailed evidences regarding the powers of the *Khalifah*. And all of them are collected together in what was reported by Al-Bukhari from 'Abd Allah Bin Umar that he heard the Messenger ﷺ say

«...الإِمَامُ رَاعٍ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ»

“...The Imam (ruler) is a guardian and responsible (will be questioned) of his subjects”, and in the narration of Ahmad and Al-Bayhaqi and Abu Awanah from 'Abd Allah Bin Umar

«الإِمَامُ رَاعٍ وَهُوَ مَسْئُولٌ عَنْ رَعِيَّتِهِ»

“The Imam is a guardian and is responsible of his subjects”, in other words, everything that is connected to managing the affairs of the subjects from all issues is only for the *Khalifah* and restricted to him alone, and he can delegate whom he wants, to what he wants, as he wants, by proof that it is analogous to proxy.

Article 37

The *Khalifah*'s adoption is restricted by the *Shari'ah* rules; he is prohibited to adopt any rule which is not derived according to a legitimate deduction from the *Shari'ah* evidences, and he is restricted with what he adopted of the rules, and by what he bound himself to with respect to the method of derivation. So he is not permitted to adopt a rule which has been derived according to a methodology which contradicts the methodology he adopted, and he cannot give an order which contradicts the rules that he had adopted.

There are two issues in this article: the first being that the *Khalifah* is restricted in the adoption of rules to adopting from the *Shari'ah* rules; in other words, he is restricted by the Islamic *Shari'ah* in legislation and enacting laws. Therefore, it is not permitted for him to adopt anything which contradicts that since they would be the rules of *Kufr* (disbelief); if he adopted rules from other than the Islamic rules, and he knew that what he had adopted was something other than the Islamic *Shari'ah*, then the words of Allah (swt)

﴿وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ﴾

“And whoever does not judge by what Allah has revealed - then it is those who are the disbelievers.” (TMQ 5:44) apply to him, so if he believed in the rule that he had adopted, then he would commit disbelief and apostatise from Islam. If he did not believe in it, but he took it upon the basis that it did not contradict Islam, in the same manner that the Ottoman *Khulafaa'* acted during their final days, then it would be forbidden for him but he wouldn't commit disbelief. If he had a semblance of an evidence, such as the one who legislates a rule which has no evidence, due to a benefit that he thinks is there, and relies upon the rule of *Al-Masalih Al-Mursalah*, or the “preventing the means” or “the means of the actions” or anything

similar, then if he thought that these rules were *Shari'ah* rules and evidences, it wouldn't be forbidden for him and nor would he commit disbelief. However, he is mistaken, and what he has derived is considered a *Shari'ah* rule by all of the Muslims, and it is obligatory to obey it if the *Khalifah* adopts it, since it is a *Shari'ah* rule, and it would have a semblance of an evidence even if he was mistaken in the evidence, since he is like the one who is mistaken in the deduction from the evidences. In any case, it is obligatory for the *Khalifah* to restrict his adoption to the Islamic *Shari'ah*, and to restrict himself to adoption of *Shari'ah* rules derived by a correct deduction from the *Shari'ah* evidences. The evidence for this:

Firstly: What Allah (swt) obligated upon every Muslim, whether they were the *Khalifah* or not, to conduct all of their actions according to the *Shari'ah* rules; Allah (swt) says

﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ﴾

“But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves.” (TMQ 4:65). Conducting the actions according to the *Shari'ah* rules necessitates the adoption of a specific rule when there are a number of understandings of the address of the Legislator; in other words, when the *Shari'ah* rule is numerous. So adoption of a specific rule in those issues where there are a number of opinions is obligatory upon the Muslim when he wants to undertake the action, in other words, when he wants to apply the rule, and so it is obligatory upon the *Khalifah* when he wants to carry out his action and that is the rule.

Secondly: The text of the pledge of allegiance which the *Khalifah* is contracted upon, obliges him to adhere to the Islamic *Shari'ah*, since it is a pledge upon the Book and the *Sunnah*, and so it is not permitted for him to leave these two - rather whoever intentionally goes outside these two commits disbelief and if it was unintentional then he would be sinful.

Thirdly: The *Khalifah* is appointed in order to implement the *Shari'ah*, and so it is not permitted for him to implement anything from outside the *Shari'ah* upon the Muslims, since the *Shari'ah* prohibits such an action in a decisive manner which reaches the level whereby the one who implements other than Islam has their *Iman* negated, which is an indication for it being decisively prohibited. This means that the *Khalifah* is restricted in his adoption of the rules, in other words, in his drafting of the laws according to the *Shari'ah* rules alone, and if he drafts any laws based upon anything else, then he will commit disbelief if he believes in it, and will be sinful if he doesn't.

These three evidences are the proof for the first issue in this article. As for the second issue of the article which is that the *Khalifah* is restricted by what he has adopted and by what he adheres to in terms of a method of deduction, the proof for this is that the *Shari'ah* rule which the *Khalifah* implements is the *Shari'ah* rule for him, and not for others; in other words, the *Shari'ah* rule which he adopted in order for his actions to proceed in accordance with and not any *Shari'ah* rule. So if the *Khalifah* deduced a rule, or followed someone else in it, that *Shari'ah* rule would be the rule of Allah (swt) for him, and he would be restricted by this *Shari'ah* rule in his adoption of it for the Muslims. It would not be permitted for him to adopt anything different to it, since it would not be considered to be the rule of Allah (swt) for him, because it would not be a *Shari'ah* rule with respect to him, and accordingly it would not be a *Shari'ah* rule with respect to the Muslims. Therefore, his orders that he issued for the sake of the subjects would be restricted according to this *Shari'ah* rule which he had adopted, and it is not permitted for him to issue orders which contradict whatever he had adopted from the rules. This is because that order which he issued would not be considered the rule of Allah (swt) for him, and so would not be considered a *Shari'ah* rule with respect to him, and then it would not be a *Shari'ah* rule in respect to the Muslims, in which case, it would be as though he had issued an order which was not

based upon the *Shari'ah* rule. Due to this, it is not permitted for him to issue any order which contradicts what he adopted from the rules.

Also, the method of deduction causes a change in the understanding of the *Shari'ah* rule, so if the *Khalifah* considered the *Illah* to be a *Shari'ah Illah* if it is derived from a *Shari'ah* text, and he does not think that *Maslahah* is a *Shari'ah Illah*, and he does not consider *Al-Masalih Al-Mursalah* to be a *Shari'ah* evidence, then it means that he has specified a method of deduction for himself. In which case, it would be obligatory for him to be restricted by it, and it would not be correct for him to adopt a rule whose evidence was based upon *Al-Masalih Al-Mursalah*, or to take an analogy based upon an *Illah* which was not derived from a *Shari'ah* text, since that rule would not be considered a *Shari'ah* rule for him as he does not recognise its evidence as a *Shari'ah* evidence, in which case in his view, it would not be a *Shari'ah* rule. As long as it is not considered to be a *Shari'ah* rule for the *Khalifah*, then it would not be a *Shari'ah* rule for the Muslims and so it would be as if he adopted a rule from other than the *Shari'ah* rules, which is prohibited for him. If the *Khalifah* was a *Muqallid* (someone who follows another person's *Ijtihad*), or a *Mujtahid* in an issue and not a *Mujtahid Mutlaq* or *Mujtahid Madhhab*, and he did not have a specific method of deduction, then he would be permitted to adopt any *Shari'ah* rule as long as it has an evidence, as long as that evidence is a semblance of an evidence; he would not be restricted by anything in his adoption of the rules but rather he would only be restricted by what he issued in terms of orders such that they should not be issued except according to what he had adopted from the rules.

Article 38

The *Khalifah* has the complete right to govern the affairs of the subjects according to his opinion and *Ijtihad*. He can

adopt anything of the permitted issues that he needs to run the affairs of the State and to manage the peoples' affairs and he is not permitted to contradict any *Shari'ah* rule for the sake of benefit. For example, he cannot prohibit the single family from having more than one child on the pretext of shortage of foodstuffs, or fix prices on the pretext of preventing exploitation, or appoint a non-Muslim or a woman as a governor on the pretext of looking after the affairs or benefit, nor anything else which contradicts the *Shari'ah* rules. It is not permitted for him to prohibit a permitted matter and nor to allow a prohibited matter.

The *Khalifah* has the complete right to govern the affairs of the subjects according to his opinion and *Ijtihad*, but he is not permitted to contradict any *Shari'ah* rule using benefit as the proof – so he cannot prevent the subjects from importing goods for the sake of protecting the State's industry, unless it would damage the State's economy, or fix prices for the sake of preventing exploitation, or force the owner to rent his property for the sake of easing housing, unless there was a pressing emergency for that, nor anything else which contradicts the *Shari'ah* rules. It is not permitted for him to prohibit something permitted and to make something prohibited permitted.

The proof for this is the words of the Prophet ﷺ

«الإِمَامُ رَاعٍ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ»

“The Imam (ruler) is a guardian and responsible (will be questioned) of his subjects” reported by Al-Bukhari through 'Abd Allah Bin Umar, and also that the rules which the *Shari'ah* gives to the *Khalifah* such as his independence of action according to his opinion and *Ijtihad* in the wealth of the commissioned *Bayt Al-Mal* (state treasury), and such as the coercion of the people to follow a specific opinion in the single issue, and whatever else is similar. This narration gives the

Khalifah the complete right in governing the affairs of the subjects without any restriction, and the rules of the *Bayt Al-Mal*, adoption, preparation of the Army, appointing the governors, and whatever else which has been given to the *Khalifah* was given to him in an absolute manner without any restriction, which is proof that he can carry out the governing of the affairs according to how he views without any restriction, and to obey him is obligatory while disobeying him is a sin. However, the undertaking of this governing must be done according to the rules of the *Shari'ah*; in other words, according to the *Shari'ah* texts. So the mandatory power, even if it has been given to him absolutely, is restricted by the *Shari'ah*; in other words, according to the rules of the *Shari'ah*. For example, he has been granted the power to appoint the governors as he pleases, but it is not correct to appoint the disbeliever, or child, or woman as a governor, since it has been prohibited by the *Shari'ah*. Another example is that he may permit the opening of embassies of the disbelieving countries in the lands which are under his authority, and he is allowed to do that without any restriction, however it is not correct to permit the opening of embassies for a disbelieving country that wants to use the embassy as a tool for control over the Islamic lands, since the *Shari'ah* prohibited that. Likewise, he may draft the sections of the budget, and the necessary amounts for each section, but he may not draft a section in the budget for building a dam whose cost is beyond the revenues of the *Bayt Al-Mal* on the basis that he will collect taxes to pay for it. This is because it is not permitted from the *Shari'ah* to raise taxes for the sake of something which is not vital such as this dam. In this manner, though he has absolute power in governing the affairs which have been given to him by the *Shari'ah*, but this absoluteness can only operate according to the rules of the *Shari'ah*. Additionally, what is meant by the absolute right in the governing of the affairs is not that he can draft laws which he sees as necessary for the governing of the affairs of the lands, but rather the meaning is that he has been given the independence of action to act according to his opinion of how the affairs should be carried out in those issues

that have been permitted to him, at which point he drafts the laws in those issues which he has been permitted to undertake according to his opinions, and then it becomes obligatory for the people to obey him since the *Shari'ah* gave him the independence of action to apply his opinion in those issues and ordered us to obey him. So he may make this opinion into a law which people are obliged by. For example, he has been given the right to manage the affairs of the *Bayt Al-Mal* according to his opinion and *Ijtihad*, and order the people to obey him accordingly, so he can draft financial laws for the *Bayt Al-Mal* at which point it becomes obligatory to obey these laws. Likewise, he has been given the leadership of the Army and the management of its affairs according to his opinion and *Ijtihad*, and the people are ordered to obey him accordingly. So he may draft laws regarding the leadership of the Army and for its administration at which point it becomes obligatory to obey those laws. Likewise, he has been given the right to manage the interests of the subjects according to his opinion and *Ijtihad*, and to appoint people to manage the interests and work with them according to his opinion and *Ijtihad*, and the people have been ordered to obey him accordingly. So he may draft laws for the Administration of the Affairs, and he may draft laws regarding the civil servants at which point it becomes obligatory to obey those laws. He may draft laws for every issue that has been left to the opinion and *Ijtihad* of the *Khalifah* in the issues which he has the mandatory powers, and it would be obligatory to obey those laws.

It cannot be argued that these laws are styles, and that the styles are from the permitted issues, and so they are permitted for all the Muslims in which case it is not permitted for the *Khalifah* to specify specific styles and make them obligatory, since it is making it obligatory to act upon something permitted, and to obligate an act upon something permitted is making the *Mubah* (permitted) *Fard* (obligatory), and making the *Mubah* (permitted) *Haram* (prohibited) by prohibiting anything other than these styles, and this is not allowed. This cannot be argued, since the

permitted are styles from the angle that they are styles, as for the styles of administrating the *Bayt Al-Mal*, they are permitted for the *Khalifah* and not every person, and the styles of the leadership of the Army are permitted for the *Khalifah* and not every person, and the styles of the management of the interests of the subjects are permitted for the *Khalifah* and not all the people. Therefore, the obligation of acting according to this permitted issue which the *Khalifah* decided upon, does not make that *Mubah* (permitted) into a *Fard* (obligation), rather it only makes obeying the *Khalifah* obligatory according to what the *Shari'ah* gave to him from the right to act independently according to his opinion and *Ijtihad* or in other words, in what he decided from opinion and *Ijtihad* in order to govern the issues. Since although it was originally permitted, the *Khalifah* made it mandatory and prohibited anything else, but it is permitted for the *Khalifah* to govern according to it, since the governing is his issue, and it is not permitted for any other person since this governing is not their issue. Therefore, it is not obligatory to adhere to what the *Khalifah* adopted from the permitted actions in order to govern the affairs; in other words, what the *Shari'ah* gave to the *Khalifah* to act independently in according to his opinion and *Ijtihad*, from the angle that the *Khalifah* made something *Mubah* (permitted) into *Fard* (obligatory), and made the *Mubah* into *Haram* (prohibited), but rather from the angle that the obedience to the *Khalifah* is obligatory in whatever the *Shari'ah* gave to the *Khalifah* to act independently in according to his opinion and *Ijtihad*. So, every *Mubah* (permitted issue) that the *Khalifah* made binding in order to facilitate the governing of the issues becomes obligatory upon every individual from the subjects to adhere to. Based upon this, Umar bin Al-Khattab (ra) registered the departments, and based upon this, the *Khulafaa'* laid down specific arrangements for their administrators and for the subjects, and obliged them to work according to these arrangements and prohibited them to work in any other way. Based upon this, it is permitted to draft administrative laws and the remaining laws which are from this type, and obedience to them is obligatory in

the same manner as obedience to the rest of the laws, since the obedience is to the *Khalifah* according to what he orders, from what the *Shari'ah* has given him in terms of rights and independence to act.

However, this is only in the permitted issues which are for the governing of the affairs, in other words, what has been given to the *Khalifah* to act independently in according to his opinion and *Ijtihad*, such as the organisation of the administrations, arranging the soldiers and similar, and not in all the permitted issues but rather only what is permitted for the *Khalifah* in his capacity as a *Khalifah*. As for the rest of the rules from the *Fard* (obligation), *Mandub* (recommended), *Makruh* (disliked), *Haram* (prohibited) and the *Mubah* (permitted) for all the people, then the *Khalifah* is restricted in those according to the *Shari'ah* rule. He is not permitted to stray outside of these at all, due to the words of the Prophet ﷺ

«مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ»

“If anyone introduces in our matter something which does not belong to it, will be rejected”, which is general encompassing both the *Khalifah* and anyone else.

With regards to that which has not been given to the *Khalifah* to run according to his opinion and *Ijtihad* but instead was permitted for all of the people – it is not permitted for him to legislate laws which force people upon it; for example, the techniques of leading the Army are run according to his opinion and *Ijtihad*, but the people are permitted to wear the clothes that they like according to the appearance they like and so it is not permitted to draft laws which would limit the appearance of their clothes. And they are permitted to build their houses according to any architectural style they like, and so it is not permitted for the *Khalifah* to draft laws which would limit the styles for their houses, since this is a *Mubah* (permitted) issue for all the people, so any forcing of the people upon a specific thing in this type of *Mubah* (permitted) issue at the expense of others, is equivalent to

obligating and prohibiting the *Mubah*, and this is not permitted for the *Khalifah*. If he did it, obedience to him would not be obligatory and the issue would be raised to the court of the *Madhalim* (injustices). Rather, his adoption is limited to a single area, which is that in which he has been given the independence to act according to his opinion and *Ijtihad*. It is permitted for him to make the people adhere to a specific opinion and *Ijtihad*, and obedience to him is obligatory; in other words, it is permitted for him to draft laws in these issues, in other words, those issues which are permitted for the *Khalifah* and not for the general people such as the styles of leading the Army and so on. In such issues, he can obligate people to follow his specific opinion and *Ijtihad*, and it would be obligatory upon them to obey him, in other words, it is permitted for him to draft laws in such issue, while it is not permitted for him to do so at all in anything other than these issues.

Accordingly, it is not permitted for the *Khalifah* to make prohibited what has been permitted or to make permitted what has been prohibited with the justification that it is for the governing of the affairs. So it is not permitted for him to say that it is not permitted to sell wool to outside of these lands with the justification that it is for the sake of governing the affairs; this is since trade is *Mubah* (permitted). It is not permitted to make it *Haram* (prohibited) or to prevent it. But, if selling wool or weapons or anything from amongst the *Mubah* (permitted) things is confirmed to cause a harm, then selling that thing alone becomes *Haram* (prohibited) because it leads to a harm, while the object itself remains *Mubah* (permitted); this is according to the principle taken from when the Prophet ﷺ prohibited the Army from drinking from the wells of Thamud.

Article 39

The *Khalifah* does not have a fixed term of office; as long as the *Khalifah* preserves the *Shari'ah* and he implements its

rules, and is capable of carrying out the affairs of the State, he remains as a *Khalifah* as long as his situation does not change to one that would remove him from the leadership of the State. If his state changes in this manner, then it is obligatory to remove him from his position at that time.

The proof for this is that the text of the pledge of allegiance mentioned in the narrations came in an absolute form and was not restricted by any specific period. Additionally, the righteously guided *Khulafaa* were each contracted upon a pledge in an absolute form, which was the pledge mentioned in the narrations, and their terms were not fixed. So each one of them undertook the *Khilafah* from the time they were contracted until they died, which is an *Ijma* of the companions that the *Khilafah* does not have a fixed term, rather it is absolute, and if someone is contracted, they remain as *Khalifah* until they die. This is the case unless something occurs to the *Khalifah* which would remove him, or make it necessary to remove him at that time. But this is not a limit upon the term of the *Khilafah*, rather it would be something that occurred which led to a deficiency in the conditions of the *Khilafah*, since the form of the pledge of allegiance which has been determined by the *Shari'ah* texts and the *Ijma* of the companions made the *Khilafah* an indeterminate term. However, it is limited by the undertaking of what he was contracted upon, which was the Book and the *Sunnah*, in other words, the implementation of the *Shari'ah*; if he did not protect the *Shari'ah* or did not implement it, then he would display open disbelief which would make resistance against him obligatory upon the *Ummah* due to the narration

«إِلَّا أَنْ تَرَوْا كُفْرًا بَوَاحًا»

“Unless you witness open Kufr” (agreed upon narration from 'Ubadah b. Al-Samit).

Article 40

The issues which alter the state of the *Khalifah* and ,therefore, remove him from the *Khilafah* are three:

- a. If one of the contracting conditions of the leadership of the State becomes deficient, such as if he apostatises, or commits flagrant sin, or becomes mad, or anything similar. This is because these are from the conditions of contracting, and the conditions of continuation.
- b. The incapability to execute the duties of the *Khilafah*, for any reason whatsoever.
- c. Coercion over him which makes him unable to independently act in the interests of the Muslims according to his opinion in agreement with the *Shari'ah*. So if an overpowering force could subdue him to the point that he became unable to govern the affairs of the subjects by his opinion alone according to the *Shari'ah* rules, he is considered legally incapable of executing the duties of the State, in which case he would be removed from the *Khilafah*. This could occur in two situations:

The first situation: For an individual or group of individuals from his advisors to hold sway over him to the point they began to take full control of running the affairs. If it was believed that he could be liberated from their influence, he is admonished for a specific time, and if he does not remove their influence, then he is removed. And if it was not believed that he could be liberated, he is removed immediately.

The second situation: For him to become a prisoner in the hands of an overpowering enemy, either literally or by his submission to the influence of the enemy. This situation is evaluated – if it was hoped he could be liberated, then there is a delay until no such hope remains, and if there were no hope

in his liberation, then he is removed; if there was no hope in his liberation, then he is removed immediately.

The proof for this is the texts that have been related in regards to the conditions of the *Khalifah*, since these texts indicate that these conditions are conditions for continuation and not simply conditions for taking the position alone. When the Messenger ﷺ said

«لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ»

“Never will succeed such a nation that makes a woman their leader” (reported by Al-Bukhari from Abu Bakrah), his words included the ruling, so as long as the person is a leader, he could not be a woman; so if a man who was a ruler became a woman, due to any reason, then he would have lost this condition and it would be obligatory to remove him immediately. In the same manner, when Allah (swt) said

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ﴾

“O you who have believed, obey Allah and obey the Messenger and those in authority among you.” (TMQ 4:59), His (swt) words ***“Among you”*** next to ***“those in authority”*** clearly means that the person of authority must be an adherent of Islam as long as he is a person of authority. So if the person of authority became someone not from amongst us, in other words, became a disbeliever, then this characteristic which the Quran stipulated for the person of authority would be lost - the loss of the condition of being Muslim - at which point he becomes removed from this position of authority since it is not correct for him to be a person of authority while he is not from amongst us, in other words, not a Muslim. And the same applies to all the texts which have been related in regards to the conditions of the *Khalifah*; they are comprehensive texts which encompass the

perpetual characteristics that are necessary for the one described, which indicates that they are conditions of continuation and not simply conditions for taking the position alone. Based upon that, the conditions for the contracting of the *Khilafah* are also the conditions for removing him, since their presence is a condition for the contracting of the *Khilafah*, and a condition for its continuation due to the generality of the text, and their loss means the loss of its continuation, and so it is prohibited for the person to remain in their position. This is the proof for paragraph “a” of the article.

As for paragraph “b”, its evidence is that the contract of the *Khilafah* is over the execution of its duties; so if he becomes incapable to execute what he was contracted upon, it becomes obligatory to remove him since he has become like one who in reality is not there. Additionally, due to his inability to execute the actions which are commissioned to him as *Khalifah*, the issues of the *Deen* and the interests of the Muslims would be suspended, and this is an evil that must be removed, and it cannot be removed except by his removal so as to be replaced by someone else. His removal in this situation would become mandatory. It should be known that this is not linked to a specific reason; rather anything which afflicted him leading to his incapacity in executing his actions necessitates his removal. If it does not make him incapable, then he is not removed, and for this reason it cannot be said that losing limbs from his body necessitates removal or not, in the same way, it cannot be said that if he is afflicted by a specific illness, it necessitates his removal or not. This is since there is no text regarding this at all; rather the *Shari’ah* rule is that the one incapable of executing the actions which they have been commissioned for necessitates his removal, whatever the reason for this incapacity. This is not specific for the *Khalifah*, rather it is general and applies to everyone who is commissioned to an action, irrespective of whether he was appointed as a ruler such as a governor or as an employee such as a department manager; his incapacity necessitates his removal.

The proof for paragraph “c” is the same as the proof for paragraph “b”. That is because the incapacity to execute the actions that have been commissioned to him as the *Khalifah* is of two types: literal incapacity and legal incapacity. Literal incapacity is when he is physically incapable, in other words, the loss of the physical capability to execute the actions, and this is what was discussed in paragraph “b”. Legal incapacity is when he is physically able to execute the actions, but he is incapable of freely acting to undertake the actions, and so the rule of literal incapacity would apply to him, since he is unable to undertake the execution of the actions which have been commissioned to him by himself, due to his incapability of freely acting in the affairs by himself, and so he becomes like the one who is absent; for this reason, it is necessary to remove him. This has two situations: the first is being confined, and the second is being overpowered.

As for the situation of confinement, it is when someone from his assistants takes control over him, and takes full control of implementing the issues while preventing him from dealing with them, and the one in control is the one who deals with the position of the *Khilafah*, and so the *Khalifah* in this situation is considered to be like the one who is confined and is prevented from freely speaking. Since the contract of the *Khilafah* only proceeds upon the person of the *Khalifah*, and ,therefore, it is obligatory to attend to the *Khilafah* himself, this confinement over him or the full control of his assistants means that he has lost the ability to execute the actions that have been commissioned to him; accordingly, he has become like the one who is absent and must be removed. However, this situation will be evaluated; if there was some hope that the influence of the one who took control over the *Khilafah* could be removed and that his confinement could be broken, then his removal is delayed; if the confinement is not broken, then he is removed.

As for the situation of being overpowered, such as when he becomes a prisoner in the hand of the overpowering enemy and is unable to liberate himself from them, then he is prevented from

the contract of the leadership given to him due to his incapability of looking into the affairs of the Muslims. This is the case whether the enemy was from amongst the disbelievers or rebellious Muslims. In this situation, it is obligatory upon all the *Ummah* to save him either through fighting or paying a ransom, and if there was no hope of this happening, then if he was a prisoner in the hands of the disbelievers, he would be removed immediately. If, however, he was a prisoner of the rebels, the situation would be evaluated; if they had an *Imam*, and they lost hope in recovering the *Khalifah*, then he would be removed at the time, and if they did not have an *Imam*, then he would be considered as the one who is in the situation of confinement, in other words, they would delay for a period, and if his imprisonment was not ended, he would be removed.

These are the proofs for the three paragraphs and in totality, they are the proofs for the conditions of the *Khilafah*. So, in the same manner, the ability to carry out what has been commissioned to him is a condition. Thus, his incapacity to carry out what he has been commissioned to do entails the loss of this condition. However, it should be noticed that the loss of some of these conditions remove him from the *Khilafah*, in other words, annul the contract instantly, and the loss of some of them does not remove him from the *Khilafah* but would mandate his removal. The three situations of apostasy from Islam, being completely mad and becoming a physical prisoner in the hands of the disbelievers with no hope of releasing him, remove him from the *Khilafah* and he has deposed himself immediately even if his removal was not ruled upon. Therefore, it would mean that it is not obligatory to obey him, and his orders are not implemented and the contract of the *Khilafah* with him is annulled.

As for if his just character is damaged by the appearance of clear sin, or changing his sex to female or someone whose gender is not clear, or if he became afflicted by temporary madness, or he became literally incapable of carrying out the *Khilafah*, or he is confined through being influenced by an

individual or group from his advisors who take full control of executing the affairs, or he becomes a physical prisoner with the hope of being able to be liberated, or he falls under the influence of the disbelievers who control him; in these seven circumstances, it is obligatory for him to be removed, however, he is not removed except by a judge's verdict. In all of these seven circumstances, it is obligatory to obey him and execute his orders until the order to remove him is issued; this is because none of these situations results in the automatic annulment of the contract of the *Khilafah* but rather relies upon the verdict of a judge. The difference between the conditions which if lost result in his removal from the *Khilafah* and those conditions whose loss does not remove him from the *Khilafah* but rather mean that he is deserving of being removed, is that those conditions whose loss makes the contract invalid from its origin and quality, in that they return to the contract or are one of its pillars, then the contract would be invalid in this case since if they were not present at the time of the contracting of the *Khilafah*, then the contract would be invalid and would not have been concluded. If they appear during the period of the *Khilafah*, the contract would be invalid, and would be void as well. This would occur with conditions such as the condition of Islam, sanity and the capability to carry out the actions individually. As for the conditions whose loss does not make the contract invalid, but rather its basis remains legitimate, but it makes it invalid from its properties, since it does not return to the contract itself, nor to one of its pillars, but rather to a property attached to it. In this case, the contract is not invalid but rather is imperfect. So if all these conditions were not present at the time of contracting the *Khilafah*, the *Khilafah* is contracted but it would be imperfect and its annulment would rely upon the verdict of a judge. In the same manner, if they appear during the period of the *Khilafah*, then the contract would become imperfect, but it would not void itself. Rather, its annulment would rely upon the verdict of a judge. Examples of this would be like the condition of being male, just and whatever is similar. It is from this explanation, that the difference between the changing of the

condition of the *Khalifah* which removes him from the *Khilafah*, and the changing of condition which does not remove him from the *Khilafah* but rather makes him deserving of being removed has been arrived at.

Article 41

The court of the *Madhalim* (injustices) is the only authority that can decide whether the change in the situation of the *Khalifah* removes him from the leadership or not, and it is the only authority that has the power to remove or warn him.

The evidence is that the occurrence of any issue from the issues that the *Khalifah* is removed for and those for which his removal is deserved, is a complaint from the injustices, and so it must be removed. And in the same manner it is one of the issues that require confirmation, and so it is imperative to be established in front of a judge. Since the court of *Madhalim* (injustices) is the one which rules to remove the injustices, and its judge is the one who has the power to confirm the injustice and rule upon it, accordingly the court of *Madhalim* decides whether any of the previous ten circumstances have occurred or not, and whether the *Khalifah* is removed.

However, if the *Khalifah* is afflicted by any of the circumstances and removes himself, then the issue is closed, and if the Muslims see that it is necessary for him to be removed due to this situation occurring and he disagrees with them, then the issue is referred to judgement due to the words of Allah (swt)

﴿ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ ﴾

“And if you disagree over anything, refer it to Allah and the Messenger.” (TMQ 4:59); in other words, if you and the people of authority disagreed, and this is a disagreement between

the person of authority and the *Ummah*, and to refer it to Allah (swt) and His Messenger (saw) is to refer it to judgement, or in other words, the court of the *Madhalim*.

The *Madhalim* court has the power to limit the period of notice to remove the mastery over him, or the period of grace for freeing him from imprisonment, during which the temporary leader would work, and after if the *Khalifah* then could carry out his powers without being under the mastery of others or imprisoned, then the work of the temporary leader would end. If the mastery over him or imprisonment did not end, then the court would rule to remove him, and the temporary leader would begin the process of appointing the new *Khalifah*.

The Delegated Assistants (*Tafwid*)

Article 42

The *Khalifah* appoints a delegated assistant or more for himself, who carry the responsibilities of ruling. So he delegates to them the management of affairs, where they conduct them according to their opinion and *Ijtihad*.

On the death of the *Khalifah*, the role of his assistants ends, and they do not continue in their work except for the period of the temporary leader.

The proof for this article is what Al-Tirmidhi narrated; the Messenger ﷺ said

«وَأَمَّا وَزِيرَايَ مِنْ أَهْلِ الْأَرْضِ فَأَبُو بَكْرٍ وَعُمَرُ»

“*My two ministers in the World are Abu Bakr and Umar*” (reported by Al-Hakim and Al-Tirmidhi from Abu Said Al-Khudri). This narration has been used by the *Fuqaha*’ and has been accepted by most of the scholars, so it is a *Hasan* narration and accordingly is a *Shari’ah* evidence that the *Khalifah* can appoint assistants. The narration used the word “*minister*” in the linguistic meaning, which is assistant, and the Quran uses it with this meaning; Allah (swt) said

﴿وَأَجْعَلْ لِي وَزِيرًا مِّنْ أَهْلِ بَيْتِي﴾

“**And appoint for me a minister from my family.**” (TMQ 20:29), in other words, an assistant. And the ministry was present during the time of the Messenger ﷺ, and its proof is the text of the narration from Al-Tirmidhi. However, it was the Messenger ﷺ who was the one who ruled, and there is nothing which indicates that he made Abu Bakr (ra) and Umar (ra) carry

out what he ﷺ did from ruling, but making them into ministers indicates that he commissioned them to assist him; in other words, commission for both of them to carry out what he ﷺ did from ruling. After the death of the Messenger ﷺ, Umar (ra) was the minister of Abu Bakr (ra), and used to carry out what the *Khalifah* used to carry out in terms of ruling, and that was apparent to the point that some of them used to say to Abu Bakr (ra), “*We don’t know whether Umar is the Khalifah or you*” reported by Ibn Hanbal in *Fada’il Al-Sahabah* from Nafi’. After the death of Abu Bakr (ra), ‘Uthman (ra) and ‘Ali (ra) were the ministers of Umar (ra), and each of them carried out what Umar (ra) did in terms of ruling, except that the power of the personality of Umar (ra) meant that the actions of assistance of the two ministers were not so apparent as that of Umar (ra) with Abu Bakr (ra), although due to the power of the personality of ‘Ali (ra), it was clear that he carried out these actions in the time of Umar (ra). After the death of Umar (ra), ‘Ali (ra) and Marwan b. Al-Hakam (ra) were the two ministers of ‘Uthman (ra). However, ‘Ali (ra) was not content with some of the actions, and so his work with ‘Uthman (ra) was not prominent since he was similar to someone withdrawn. On the other hand, Marwan (ra) was apparent in his undertaking of the ministry, in other words, the actions of ruling.

The *Khalifah* would delegate the management of affairs to his minister, and this occurred with each *Khalifah* from the righteous *Khulafaa’* in that their assistant (minister) was present, though how the assistants practised the management of affairs differed from one to the other. It is understood from the linguistic meaning of the word “minister”, or assistant to the *Khalifah*, that it means an assistant for the actions of the *Khalifah*, and since the word came general without any restrictions, then it means assistant for the *Khalifah* in all of the actions of the *Khilafah*. This is what is understood from the narration, and is supported by what occurred with Umar (ra) and Abu Bakr (ra), and so the *Shari’ah* meaning of the word is the one who assists the *Khalifah* in all the

actions of the *Khilafah*. However, he does not possess the mandatory powers of the *Khalifah* himself. Rather, if the *Khalifah* said “I have appointed so and so as a minister for me”, or “as an assistant for me”, or “act on my behalf in what I govern”, or anything similar, then the person would have all the mandatory powers of the *Khalifah* as his representative. In *Al-Ahkam As-Sultaniyyah*, Al-Mawardi called them the “delegated minister” (Wazeer Tafweed), and defined it with this meaning, saying, “As for the delegated minister, he has taken his ministry from the Imam who authorised him to manage the affairs according to his opinion, and for them to proceed according to his *Ijtihad*”. It is however necessary that the *Khalifah* is aware of every action that the delegated minister undertakes, since he is an assistant and not a *Khalifah*, and so he is not independent; rather the *Khalifah* inspects every action of him, whether it was small or big.

This *Shari’ah* reality of the assistant or minister differs completely with the reality of the minister in the democratic system. Since the cabinet in the democratic system is the government, and it is a group of people established with its characteristic as a specific group for ruling, as the ruling for them is for the group and not for the individual; in other words, the leadership is collective and not individual. So the ruler who possesses all power of ruling is the cabinet or the group of ministers collectively, and no single one of them possesses the power absolutely, but rather the power of ruling is in the cabinet collectively. As for the individual minister, he is appointed to specialise in a particular section of ruling, in which he possesses the mandatory powers that the cabinet as a whole determined for him, and whatever powers in this section were not given to him remain with the cabinet and not him.

In Islam, there is no cabinet of ministers who hold the power collectively (on the democratic model); rather the leadership is for the *Khalifah* who is given *Bay’a* by the *Ummah* in order to rule them by the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ. The *Khalifah* appoints ministers for himself

(ministers of *Tafwid*) who are given general authorisation to act on his behalf and generally support the *Khalifah* in carrying the responsibilities of the *Khilafah*, and so they are ministers according to the linguistic meaning, or in other words, assistants of the *Khalifah* in what they are charged with.

Accordingly the wide difference between the word “minister” and “ministry” in the system of Islam, and the word “minister” and “ministry” in the system of democracy, has become clear. Since the meaning that is understood from the democratic meaning of the word “minister” is dominant in the minds of the people, and when it is used the only thing that comes to mind is the democratic meaning, in order to avoid confusion and to specify the *Shari’ah* meaning alone, it is not correct to use the term “minister” alone for the assistant of the *Khalifah* without specifying it. Rather, the term “assistant” should be used in its real meaning, or the term “minister” and “ministry” should be specified such that it is removed from the democratic understanding, and the Islamic meaning alone is understood, such as using the term “minister of authorisation” (*Wazir Al-Tafwid*)

The assistant is appointed and removed at the order of the *Khalifah*. At the death of the *Khalifah*, the assistants’ role comes to an end, and they only continue through to the end of the period of the temporary leader. They then require a new authorisation from the new *Khalifah* in order to continue in their role, and they do not require to be formally removed since their role ended with the death of the *Khalifah* who took them as assistants.

Article 43

The conditions for the assistant are the same as the conditions for the *Khalifah*; in other words, to be male, free, Muslim, adult, sane, just; and he is from the people of the capability in whatever actions were delegated to him.

The evidence here is the evidence for the *Khalifah*, so it is obligatory for him to be a male due to words of the Prophet ﷺ

«لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ»

“Never will succeed such a nation that makes a woman their ruler.” (reported by Al-Bukhari from Abu Bakrah).

He must be a Muslim due to His words

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

“And never will Allah give the disbelievers over the believers a way [to overcome them].” (TMQ 4:141); therefore, it is forbidden for a non-Muslim to be a ruler over the Muslims, since ruling is the greatest way over the Muslims.

He is to be free since the slave does not have control over his own issues and so he cannot undertake the control of other peoples' affairs.

He should be an adult, due to the words of the Messenger ﷺ

«أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنْ الصَّغِيرِ حَتَّى يَكْبُرَ وَعَنْ الْمَجْنُونِ حَتَّى يَعْقِلَ أَوْ يُفِيقَ»

“The Messenger of Allah said, “The Pen has been lifted from three (their actions are not recorded) : from the sleeping person until he awakens, from the minor until he grows up, and from the insane person until he comes to his senses.” and in a narration

«وَعَنْ الْمُتَبَلَّى حَتَّى يَبْرَأَ»

“and from the afflicted person until he recovers” (reported by Ibn Maja and Al-Hakim from 'Aishah, and the wording is from Ibn Maja). Al-Tirmidhi and Ibn Khuzaima reported the same from Ali.

From the raising of the pen is that his actions in his own affairs are not valid, and so it is not valid for him to act in the affairs of others. In addition, the narration of Abu 'Uqayl Zuhra Bin Ma'bad from his father 'Abd Allah b. Hisham who was at the time of the Prophet when his mother Zaynab Bin Humayd took him to the Messenger of Allah ﷺ and said: O Messenger of Allah, take *Bay'a* from him. He ﷺ replied

«هُوَ صَغِيرٌ، فَمَسَحَ رَأْسَهُ وَدَعَا لَهُ»

“He is a little child, and he passed his hand over his head and invoked Allah for him.” as reported in Al-Bukhari. So as long as the child is not permitted to give the *Bay'a*, then by greater reasoning, he cannot accept it.

As for being sane, this is due to the narration just mentioned

«رَفَعَ الْقَلَمَ عَنْ ثَلَاثَةٍ ...»

“The pen is lifted from three (their actions are not recorded)” until it was mentioned

«وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ أَوْ يُفِيقَ»

“and from the insane person until he comes to his senses” and in a report

«وَعَنِ الْمُبْتَلى حَتَّى يَبْرَأَ»

“and from the afflicted person till he recovers”. From the raising of the pen is that his actions in his own affairs are not valid and so it is not valid for him to act in the affairs of others.

He should be just, since Allah (swt) made it a condition for the witnessing, saying

﴿وَأَشْهِدُوا ذَوَىٰ عَدْلٍ مِّنكُمْ﴾

“And take for witness two persons from among you.” (TMQ 65:2), and so it is a condition for the assistant by greater reasoning.

It is a condition for the assistant to be from the people of sufficiency in the actions of ruling since that is necessitated from undertaking ruling, since the one who was not capable would not be able to carry it out. And also due to the evidence mentioned, including: Muslim reported through Abu Dharr:

«قُلْتُ: يَا رَسُولَ اللَّهِ، أَلَا تَسْتَعْمِلُنِي؟ قَالَ: فَضْرَبَ بِيَدِهِ عَلَى مَنْكِبِي ثُمَّ قَالَ: يَا أَبَا ذَرٍّ، إِنَّكَ ضَعِيفٌ، وَإِنَّهَا أَمَانَةٌ، وَإِنَّهَا يَوْمَ الْقِيَامَةِ خَزْيٌ وَنَدَامَةٌ، إِلَّا مَنْ أَخَذَهَا بِحَقِّهَا وَأَدَّى الَّذِي عَلَيْهِ فِيهَا»

“I said: O Messenger of Allah, will you not use me? He placed his hand upon my shoulder and then said O Abu Dharr, you are weak, and it is an Amanah (trust), and on the Day of Judgement, it will be a disgrace and a regret except (for those) who take it by its right and perform its duties correctly”.

The Messenger of Allah ﷺ considered taking it without its right, in other words, if the person was not suitable for it, would be a disgrace and regret, which is an indication upon the decisiveness of the order.

Article 44

It is a condition for the empowering of a *delegated assistant* (*Tafwid*), that his empowerment encompasses two issues: The first being general responsibility, and the second being the representation. Accordingly, it is necessary for the *Khalifah* to say to him “I appoint you on my behalf as my deputy” or anything that is of a similar meaning from the wordings that encompass the general responsibility and representation. This authorisation enables the *Khalifah* to send the assistants to specific locations, or transfer them to other places and other

work as is required as the assistant of the *Khalifah*, and without the need for a new authorisation since it all falls under the original empowerment.

The evidence for this is the reality of the work of the assistant, since the minister of *Tafwid*, or the assistant of *Tafwid*, who is the minister that the *Khalifah* appointed to carry the responsibility of ruling and authority with him. He is authorised to manage the affairs according to his opinion, and to conduct them according to his *Ijtihad* in agreement with the *Shari'ah* rules, and so the *Khalifah* empowers him with a general handling and representation. The representation here is a contract, and contracts are not correct unless they are contracted with a direct word, and so for this reason, it has been made a condition that empowering an assistant must occur with wording that indicates he is a representative in the place of the *Khalifah* and has the general control. Such as if the *Khalifah* said to him "I granted you what is upon me, to act on my behalf", or says, "I made you a minister, and decided upon your representation" or something similar. In other words, it should encompass the general representation and general control by any manner it is understood, so it is imperative that the empowerment of the assistant is upon words that indicate the reality of the assistant, which is the representative of the *Khalifah*, and takes everything in terms of mandatory powers which the *Khalifah* has. In other words, it is imperative that the contract of ministry with the assistant is upon a wording which encompasses two conditions: the first being general control, the second being representation, and if the wording does not explicitly cover these two conditions, then the ministry for the assistant is not contracted.

Though he is empowered with representation and general control, it is permitted for the *Khalifah* to use him in a specific action or place at a period of time, and for other work or another place at another time. The two sheikhs (Muslim and Al-Bukhari) reported from Abu Hurayrah

«بَعَثَ رَسُولُ اللَّهِ ﷺ عُمَرَ عَلَى الصَّدَقَةِ»

“The Messenger of Allah ﷺ sent Umar to collect Sadaqah (Zakah)”. Al-Nasa’i and Al-Darami reported

«أَنَّ النَّبِيَّ ﷺ حِينَ رَجَعَ مِنْ عُمْرَةِ الْجُعْرَانَةِ بَعَثَ أَبَا بَكْرٍ عَلَى الْحَجِّ»

“When the Prophet ﷺ returned from ‘Umra, he sent Abu Bakr for the Hajj”. In other words, Abu Bakr (ra) and Umar (ra) – who were the two ministers for the Messenger of Allah ﷺ, were charged with general control over specific actions, and not in all the actions at the time of the Messenger ﷺ, despite that they were assistants authorised with general control and representation as inferred from the ministry of authorisation (*Wizara’ Al-Tafwid*). ‘Ali (ra) and ‘Uthman (ra) did the same at the time of Umar (ra). And even during the time of Abu Bakr (ra) when his assistant Umar (ra) was very apparent in exercising general control and representation, to the point that some of the companions would say to Abu Bakr (ra) that we don’t know whether Umar (ra) or you is the *Khalifah*, despite that Abu Bakr (ra) would make Umar (ra) responsible for the judiciary in some periods, as has been reported by Al-Bayhaqi with a chain that was strengthened by Al-Hafiz.

From the *Sirah* of the Messenger ﷺ and the righteous *Khulafaa’* after him, it is understood that the assistant is authorised in the general control and representation, but it is permitted for the *Khalifah* to seek the help of the assistant in a particular place or action, just as the Prophet ﷺ did with Abu Bakr (ra) and Umar (ra), and as Abu Bakr (ra) did with Umar (ra). This is like charging an assistant to pursue the northern governorships, and another with the southern ones, and it is permitted to use the first one in the place of the second and vice versa, and to move this one to the work of such and such person, and the other to another work according to what was necessitated to assist the *Khalifah*. None of this requires a new authorisation,

rather it is valid in this case to move him from one action to another to assist, since he was originally authorised with general control and representation, and so all of these actions are part of his authorisation as an assistant. This is a difference between the assistant and the governor, since the governor is empowered with the general control in an area, and so he is not moved from it, rather he requires a new empowerment, since the new place is not part of the original authorisation/empowerment. However, an assistant who is empowered with the general control and representation can be moved from assistance in one place to another place without needing a new empowerment, since he was originally empowered with general control and representation in all actions.

Article 45

The work of the assistant is to report to the *Khalifah* after whatever he has executed of the actions of management, and whatever he implemented of government and guardianship, in order that his powers do not become like that of the *Khalifah*. Therefore, his work is to raise his reports and to implement whatever he is ordered to.

The evidence for this is also the reality of the assistant, since he is the authorised representative of the *Khalifah*, and the representative only carries out the work as a representative of the one who authorised him. Therefore, he is not independent from the *Khalifah*, rather he reports every action, totally as Umar (ra) used to do with Abu Bakr (ra) when he was his minister. So he used to inform Abu Bakr (ra) about his opinion and would implement according to what he thought.

The meaning of reporting to the *Khalifah* is not to seek his permission in every individual part of the various actions, since this contradicts the reality of the assistant; rather the meaning of

reporting to him is to confer with him in the issue, such as the need for a particular governorate to have a capable governor empowered, or to eliminate what the people complain about regarding the lack of food in the markets, or other than that from all of the issues of the State, or to present these issues simply as a report which can be looked over, and be informed about what concerns him. Accordingly, these reports are enough in order to carry out everything that is mentioned in them with all of his details without the need for the issuance of permission to act. However, if the order not to implement these reports is issued, then it is not correct for him to implement them. Therefore, these reports are simply the presentation of the issues, or consultation regarding them, and not seeking permission to undertake them and the assistant may implement the reports as long as the *Khalifah* does not stop him from implementation.

With respect to the last part of the article “and to implement whatever he was ordered to”, this is because the assistant does not take the powers of ruling in himself like the *Khalifah*, rather he takes them based upon his ministry from the *Khalifah*, and upon that if the *Khalifah* orders him to do something, then it is upon him to implement it, and it is not permitted for him not to implement it. Giving the assistant the capability to manage the affairs through his opinion and *Ijtihad* is in those issues which the *Khalifah* did not order him, whereas if he was ordered to implement an issue, it is obligatory upon the assistant to implement it in the manner that the *Khalifah* ordered, and he may not implement it in another way.

Article 46

It is imperative that the *Khalifah* scrutinises the actions of the *delegated assistants (Tafwid)* and their management of the affairs, in order to confirm what was right, and to correct any errors, since the management of the affairs of the *Ummah* has been delegated to the *Khalifah* and is decided by his *Ijtihad*.

It is imperative that the *Khalifah* scrutinises the actions of the *delegated assistants* (*Tafwid*) and their management of the affairs, in order to confirm what was right, and to correct any errors, since the management of the affairs of the *Ummah* has been delegated to the *Khalifah* and is attributed to his *Ijtihad*. The evidence for this is the narration regarding the responsibility over the subject, which is the words of the Prophet ﷺ

«الإِمَامُ رَاعٍ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ»

“The Imam is a guardian, and he is responsible (will be questioned) for his subjects”. The *Khalifah* has been delegated to manage the affairs and he is responsible over the subjects. On the other hand, the assistant is not responsible over the subjects; rather he is only responsible over whatever he carried out from the work. The responsibility of the subjects is limited to the *Khalifah* alone, and for that reason, it is obligatory for him to scrutinise the actions and management of his assistant, in order to carry out his responsibility for his subjects. Additionally, the assistant could make a mistake and ,therefore, it is imperative to correct the error that occurred, and so it is necessary to scrutinise all his actions.

Article 47

If the assistant conducted an issue, and the *Khalifah* ordered him to do it, then he must implement it as the *Khalifah* ordered him to do so, without any addition or deletion. If the *Khalifah* returned to oppose the assistant rejecting what he has already executed, then the matter is examined; if it was a rule that he had implemented properly, or wealth that he placed in of its right place, then the opinion of the assistant is implemented, since it is in origin the opinion of the *Khalifah*, and the *Khalifah* cannot revoke what he himself had implemented of rules and spent of wealth. If what the

assistant had executed was in anything else, such as appointing a governor or preparation of an army, then it is permitted for the *Khalifah* to oppose the assistant, and the opinion of the *Khalifah* is implemented, and the actions of the assistant are cancelled because the *Khalifah* has the right to redress his own action so he may redress the actions of the assistant.

This article is a description of how the assistant carries out his work, and how the *Khalifah* scrutinises the actions of the assistant, and this is taken from what is permitted for the *Khalifah* to reverse, and what is not permitted for him to reverse from the actions, since the action of the assistant is considered to be the action of the *Khalifah*. The explanation for this is that the assistant is permitted to rule independently, as is the *Khalifah*, since the conditions for ruling are considered in him, and it is permitted for him to look into the *Madhalim* (injustices) and to appoint others to look into them, since the condition for the *Madhalim* are considered in him, and he is permitted to undertake the *Jihad* by himself and to empower those who will undertake it, since the conditions of war are considered in him, and he is permitted to undertake the implementation of the issues personally or to appoint someone else to implement them since the conditions of opinion and management of affairs are considered in him. However, this does not mean that it is not correct for the *Khalifah* to cancel whatever the assistant carries out as long as the report has been raised to him, rather what it means is that he possesses what the *Khalifah* does in terms of mandatory powers, but this is on behalf of the *Khalifah* and not independent of him.

Accordingly, it is permitted for the *Khalifah* to oppose the assistant by rejecting what he has done and cancelling what has been carried out, but within the limits of what it is permitted for the *Khalifah* to reverse if he had done it himself. Therefore, if the assistant had implemented a rule in the correct manner, or gave wealth where it was necessitated, and subsequently the *Khalifah*

came and opposed the assistant in this after its implementation, then there is no value in his opposition; rather the action of the assistant is implemented, and the opinion and opposition of the *Khalifah* is rejected, since in origin it is his opinion, and in issues similar to these situations it is not correct for him to reverse his own opinion or cancel whatever implementation had been completed. Consequently, it is not correct for him to cancel the action of his assistant in these issues. If the assistant had empowered a governor, an administrator, a commander of the Army, or any other appointment, or had laid down the running of economic issues, military plans, plans for industrialisation, or anything similar, then it is permitted for the *Khalifah* to cancel it. This is because it is considered to be the opinion of the *Khalifah*, but is from the issues that are permitted for the *Khalifah* to reverse if he had undertaken them himself, and so it is permitted to cancel the work of his representative in them. Therefore, in this situation, it is permitted to cancel the actions of the assistant.

The rule in this is: *Everything that the Khalifah is able to correct from his own actions, is permitted for him to correct from the actions of his assistant, and everything that the Khalifah is not permitted to correct from his own actions, he is not permitted to correct from the actions of his assistant.*

Article 48

None of the *delegated assistants (Tafwid)* specialises in a specific department from the departments of the administrative institution, rather his responsibility is general, since those who undertake the administrative affairs are employees (civil servants) and not rulers, while the *delegated assistant* is a ruler. He is not entrusted with a specific authority in any of the tasks since his responsibility is general.

The proof is what is meant by the words “*my two ministers*” in the narration from Al-Tirmidhi, in that the assistant is the assistant to the *Khalifah* in the *Khilafah* - in other words, in ruling, and so he is a ruler and not a civil servant. For that reason, it is not permitted for him to deal with the administrative affairs since those are dealt with by civil servants and not by rulers. The assistant is a ruler and not a civil servant and so his work is taking care of the affairs and not to undertake work that employees are paid to do. Therefore, he should not undertake administrative affairs. This does not mean that it is forbidden for him to do any administrative work, rather that he should not be specified to do administrative work; rather he has general control.

As for not specifying his empowerment, this is because he is an assistant, and the assistant is empowered in representation and general control. Due to this, he does not require a new empowerment for every issue that the *Khalifah* seeks his help in, or for any area he sends him to, since his empowerment was not specific. As for the one who is empowered with a specific empowerment, he would be holding a specific responsibility such as the head of the judiciary, the head of the Army, the governor over the charity and so on; and this would require a new empowerment in every specific authority they were charged with.

The Executive Assistant (*Tanfidi*)

Article 49

The *Khalifah* appoints assistants for implementation and their work is administrative. They are not rulers and their department is the institution that executes what the *Khalifah* issues in both of the internal and foreign affairs authorities and submits what comes to him from these authorities. The department is the intermediary between the *Khalifah* and others, conveying to and from him in the following matters:

- a. Relations with the people**
- b. International relations**
- c. The military**
- d. The institutions of the State other than the military**

The executive assistant is the minister whom the *Khalifah* appoints to be his assistant in the execution of matters, the following up and implementation of his orders. He is the intermediary between the *Khalifah* and the various State departments, the subjects and the foreign office. He conveys messages to and from the *Khalifah*. He is an assistant in executing orders and is not authorised over them or entrusted with them i.e. his role is one of execution and administrative and not ruling. His department is a tool used to execute what the *Khalifah* issues to the internal and foreign offices, ensuring submission to the *Khalifah* in all that comes to him through these offices. His department acts as an intermediary between the *Khalifah* and others, where it conveys to them on his behalf and conveys to him from them.

The executive assistant used to be called a secretary (*Al-Katib*) at the time of the Messenger of Allah ﷺ and the righteous

Khulafaa'. Then he became known as the keeper of the *Diwan* of letters or correspondence. Later, it was decided that he is called the secretary of composition or the keeper of the *Diwan* of composition and then the jurists named him the executive assistant (*Wazir Al-Tanfidh*).

As for the actions regarding the four issues mentioned – the evidence is through examination of the evidences related to the *Katib* (*Wazir Al-Tanfidh*) at the time of the Messenger ﷺ and the actions of the righteous *Khulafaa'* in front of the masses of companions:

- a. The messages sent to the subjects directly. Such as:
 - His ﷺ message to the people of Najran. Abu 'Ubayd narrated in *Al-Amwal* from Abu Al-Malih Al-Huthali which mentioned at its end

«شَهِدَ بِذَلِكَ عُثْمَانُ بْنُ عَفَّانَ وَمُعَيْقِبٌ، وَكُتِبَ»

- **“’Uthman Bin 'Affan and Mu'ayqib witnessed it, and he wrote”**. Abu Yusuf reported it in *Al-Kharaj* and mentioned that the *Katib* was Al-Mughaira, and then it mentioned the message of Umar (ra) with the *Katib* being Mu'ayqib, and then the message of 'Uthman (ra) to them with the *Katib* being his servant Hamran, and then the message from 'Ali (ra) with the *Katib* being 'Abdullah b. Abi Rafi'.
- His ﷺ message to Tamim Al-Dari. Abu Yusuf mentioned in *Al-Kharaj* saying

«قَامَ تَمِيمُ الدَّارِيُّ وَهُوَ تَمِيمُ بْنُ أَوْسٍ - رَجُلٌ مِنْ لَحْمٍ - فَقَالَ يَا رَسُولَ اللَّهِ، إِنَّ لِي جِيرَةً مِنَ الرُّومِ بِفِلَسْطِينَ، لَهُمْ قَرْيَةٌ يُقَالُ لَهَا حَبْرَى، وَأُخْرَى يُقَالُ لَهَا عَيْنُونُ، وَإِنْ فَتَحَ اللَّهُ عَلَيْكَ الشَّامَ فَهَبْهُمَا لِي، فَقَالَ: هُمَا لَكَ. قَالَ: فَكُتِبَ لِي بِذَلِكَ، فَكُتِبَ لَهُ: بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ، هَذَا كِتَابٌ مِنْ مُحَمَّدٍ رَسُولِ اللَّهِ لِي تَمِيمُ

بْنِ أَوْسٍ الدَّارِيِّ، أَنَّ لَهُ قَرْيَةً جَبْرَى وَبَيْتَ عَيْنُونَ قَرْيَتَيْهَا كُلُّهَا، وَسَهْلَهَا وَجَبَلَهَا وَمَاؤُهَا وَحَرْثُهَا وَأَنْبَاطُهَا وَبَقَرُهَا وَلَعَقَبِهِ مِنْ بَعْدِهِ، لَا يُحَاقُّهُ فِيهَا أَحَدٌ، وَلَا يُلْحَدُ عَلَيْهِمْ أَحَدٌ بِظُلْمٍ، فَمَنْ ظَلَمَ وَأَخَذَ مِنْهُمْ شَيْئًا فَإِنَّ عَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ. وَكَتَبَ عَلِيٌّ

- *“Tamim Al-Dari (Tamim Bin Aws, a man from Lakhm) stood up and said: O Messenger of Allah, I have a neighbourhood from the Romans in Palestine – there is a village which is called Hibra, and another called Aynun. If Allah opens as-Sham to you, grant them to me as a gift. And so he ﷺ said – They are yours. He said – write that for me, and so he wrote: In the name of Allah, this is a message from Muhammad the Messenger of Allah to Tamim Bin Aws Al-Dari, that he has all the houses of the two villages: Hibra and Aynun, and their plains, mountains, water, agriculture, plants and its cattle, and for who comes after him. No one should contest over it with them, and no one should incline to take it by force. Whoever oppresses and takes anything from it, then they will have the curses of Allah and the angels and all of the people. 'Ali was the one who wrote it”.* When Abu Bakr (ra) took the leadership, he wrote them a message which mentioned *“In the name of Allah – this is a message from Abu Bakr the guarantor of the Messenger of Allah succeeded on the Earth, he wrote to the people of Dari, no one should spoil anything by their hand from the villages of Hibra and Aynun, and whoever heard and obeyed Allah, then do not spoil anything from them, and should build two entrances around them to prevent anyone who intended to do so from entering”*
- b. International relations:
 - The Treaty of Hdaybiyah: Al-Bukhari narrated from Al-Miswar and Marwan regarding the treaty:

«فَدَعَا النَّبِيُّ ﷺ الْكَاتِبَ ...»

- **“So the Prophet ﷺ called the Katib (writer)...”**. Abu Yusuf also narrated in the book *Al-Kharaj* saying:

«وَحَدَّثَنِي مُحَمَّدُ بْنُ إِسْحَقَ وَالْكَلْبِيُّ، زَادَ بَعْضُهُمْ عَلَى بَعْضٍ فِي الْحَدِيثِ، وَفِيهِ: وَقَالَ: اُكْتُبُوا ...»

- **“Muhammad Ibn Ishaq and Al-Kalbi informed me, some others added in the narration saying: He said: Write (plural)”**, without mentioning the name of the writer. Ibn Kathir reported

«قَالَ ابْنُ إِسْحَقَ قَالَ الزُّهْرِيُّ ... ثُمَّ دَعَا رَسُولُ اللَّهِ ﷺ عَلِيَّ بْنَ أَبِي طَالِبٍ فَقَالَ: اُكْتُبْ ...»

- **“Ibn Ishaq said Al-Zuhri said...then the Messenger of Allah called upon 'Ali Ibn Abi Talib and said: 'Write (singular)...”**. Abu 'Ubayd narrated it in the book of *Al-Amwal* from Ibn 'Abbas, where he said:

«... فَقَالَ لِعَلِيٍّ: اُكْتُبْ يَا عَلِيُّ ...»

- **“....and he said to 'Ali: 'O 'Ali, write...”** and Al-Hakim narrated from Ibn 'Abbas, and Al-Dhahabi authenticated and approved it, saying:

«... اُكْتُبْ يَا عَلِيُّ ...»

- **“.....O 'Ali, write...”**. The text of this peace treaty is well known and does not need mentioning here.

c. The Military:

- The letter of Abu Bakr (ra) to Khalid (ra), in which he commands him to travel to as-Sham. Abu Yusuf said in the book *Al-Kharaj*: “Khalid wanted to take Al-Heerah as

his centre. However, the letter of Abu Bakr came to him commanding him to travel to as-Sham as reinforcement for Abu 'Ubaydah and the Muslims...”

- d. The institutions of the state other than the military
 - The letter of the Messenger ﷺ to Mu'adh regarding the tenth (*Al-Ushr*): Yahya Ibn Adam narrated in the book of *Al-Kharaj* from Al-Hasan, he said:

« كَتَبَ رَسُولُ اللَّهِ ﷺ إِلَى مُعَاذٍ بِالْيَمَنِ: فِيمَا سَقَتِ السَّمَاءُ أَوْ سُقِيَ غَيْلاً الْعُشْرُ، وَمَا سُقِيَ بِالْغَرْبِ فَيُصَفُّ الْعُشْرُ »

- “The Messenger of Allah ﷺ wrote to Mu'adh in Yemen: *“A tenth is payable on what is watered by rain or by sizable water; and a twentieth (have of a tenth) on what is watered by bucket.”* Al-Sha’bi wrote the same narration. Ibn Abu Shaybah has also narrated similar in his book about ruling.

The *Khalifah* can appoint writers (*Kuttab*) according to his needs; rather it could reach to the level of being an obligation if he could not fulfill the obligatory tasks without appointing them. The authors who wrote the history of the Messenger of Allah ﷺ mention that he had about twenty such writers.

Article 50

The executive assistant should be a Muslim man, since he is from the close associates of the *Khalifah*.

The executive assistant is directly connected to the *Khalifah*, like the delegated assistant, and is from the close associates of the *Khalifah*. His work is attached to the ruler (the *Khalifah*), and his work necessitates that he could be pursued by the *Khalifah* and meet with him separately at any time of the night

or day, which means that it is not suitable with the circumstances of a woman in terms of the *Shari'ah* rules. Therefore, the assistant should be a man.

In the same way, it is not permitted for the executive assistant to be a non-Muslim, rather it is obligatory for him to be a Muslim since he is from the close associates of the *Khalifah* – due to His (swt) words

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَتَّخِذُوا بَطَانَةً مِّن دُونِكُمْ لَا يَأْلُونَكُمْ خَبَالًا
وَدُّوا مَا عَنِتُّمْ قَدْ بَدَتِ الْبَغْضَاءُ مِنْ أَفْوَاهِهِمْ وَمَا تُخْفَىٰ صُدُورُهُمْ أَكْبَرُ﴾

“O you who have believed, do not take as intimates those other than yourselves, for they will not spare you [any] ruin. They wish you would have hardship. Hatred has already appeared from their mouths, and what their breasts conceal is greater” (TMQ 3:118). The prohibition of the *Khalifah* taking close associates from non-Muslims is explicit in this verse and ,therefore, it is not permitted for the executive assistant to be a non-Muslim. Rather, it is obligatory for him to be Muslim, due to his direct connection with the *Khalifah*, and the fact that he is not separate from him, like the delegated assistant. It is permitted to have more than one executive assistant according to the need and the work that is required interfacing between the *Khalifah* and others.

Article 51

The executive assistant is directly connected to the *Khalifah*, like the delegated assistant, and is considered as an assistant but only in terms of execution and not in ruling.

The *Khalifah* is the ruler who undertakes the ruling and the implementation, and governing the peoples’ affairs.

Undertaking the ruling, implementation and governing requires administrative work and this necessitates the creation of a specific structure which would be with the *Khalifah* to manage the affairs which are required by the responsibilities of the *Khilafah*. So this necessitates assistants who are appointed by the *Khalifah* to execute and carry out the administrative actions, not the actions of ruling. So their action is to assist the *Khalifah* in administration, not ruling, and so he does not undertake any action of ruling that the delegated assistant would do. Therefore, he is not appointed as a governor or worker (*'Amil*), and does not govern the peoples' affairs, but rather his work is administrative to execute the ruling actions, and the administrative actions that are issued from the *Khalifah* and the delegated assistants. For that reason, he is called the executive assistant.

The jurists called him the executive minister (*Wazir Al-Tanfidh*); in other words, the executive assistant, on the basis that the word *Wazir* linguistically indicates the assistant, and they said: this *Wazir* is the interface between the *Khalifah* and the subjects and governors, he carries out what the *Khalifah* orders, executes what is issued, follows through what is ruled, informs about the assignment of governorship and the preparation of the military and defence. He also presents to the *Khalifah* the replies back from them, and whatever has occurred in order to carry out whatever he has been ordered. So he is the one assigned for the execution of the affairs, and not as a governor over them, nor empowered over them. He is similar to the head of the office of the Presidents in the contemporary era.

The Governors

Article 52

The lands which are ruled by the State are divided into units, where each unit is called a *Wilayah* (province). Each province is divided into units and each unit is called an '*Imalah* (district). The one who governs the province is called the *Wali* (governor) or *Amir* and the one who governs the '*Imalah* is called the '*Aamil* (worker) or *Hakim* (ruler).

The governors are rulers since the governorship is ruling; it is mentioned in the *Al-Muhit* dictionary: “And to govern something and upon it governorship (*Wilayah*) and guardianship (*Wilayah*), or it is the root and *wilayah* is the plan and leadership and authority”, and requires empowerment by the *Khalifah* or one whom he delegated to empower and so the governor is not appointed except by the *Khalifah*. The origin of governorship or leadership, in other words, in the governors and leaders, is the action of the Messenger ﷺ. It is confirmed that he ﷺ appointed governors over lands, and gave them the right to rule over the regions. He appointed Mu'adh Bin Jabal over *Al-Jund*, Ziyad Bin Labid over Hadramout and Abu Musa Al-Ash'ari over Zabid and 'Aden. The governor is the representative of the *Khalifah* and he undertakes whatever actions he represents the *Khalifah* in according to what he has been delegated. The governorship does not have a specific limit according to the *Shari'ah* so everyone who acts on behalf of the *Khalifah* in any action of ruling is considered to be a governor in that action according to the words which the *Khalifah* specified during his appointment. However, the governorship of the lands or the leadership is over a defined area, since the Messenger ﷺ used to define the area which he would be a governor over or empower the leadership for the leader.

This governorship is of two types - general or specific; general encompasses all of the issues of ruling in the governorship and being empowered in this manner means that the *Khalifah* delegates to him the leadership of the city or region of the governorship over all of its people, and the handling of the issues in all of his actions, and so he has a general control. As for the specific leadership, this is when the leader's leadership is limited to the management of the Army, governing of the subjects, protection of the borders and defence of the sanctities in that region or city. He cannot interfere with the judiciary and the collection of taxes.

The Messenger ﷺ appointed general governorships, such as the appointment of Amr b. Hazm over Yemen. He also appointed specific governorships, such as the appointment of 'Ali Bin Abi Talib (ra) over the judges in Yemen. The *Khulafaa'* after him ﷺ continued in the same manner, and so they used to appoint general governorships such as Umar Bin Al-Khattab (ra) appointing Mu'awiyah Bin Abi Sufyan to a general governorship. They would also appoint specific governorships, such when 'Ali Bin Abi Talib (ra) appointed 'Abdullah Bin 'Abbas over Basra in everything other than the finances and appointed Ziyaad over the finances.

The governorship in the first eras was of two types: governorship of the prayer and the governorship of the land taxes. Accordingly, in the history books they use two expressions when talking about the governorship of the leaders: the first being the leadership over the prayer and the second being the leadership over the prayer and the land taxes. In other words, the leader could either be a leader of the prayer and the land taxes or the leader of the prayer alone. The meaning of the word prayer in the governorship or leadership is not that he was the *Imam* of the people in their prayer alone; rather its meaning was the governorship over them in all of their affairs except the finances. So the word prayer meant the ruling with the exception of the collection of the taxes.

If the governor was both over prayer and land taxes, his governorship was general, and if it was limited to the prayer or to the land taxes, then his governorship was specific. In every case, this returns back to the arrangements of the *Khalifah* in the specific governorship, so he can make it specific to the land taxes, or the judiciary, or to make it specific to everything other than the finances, judiciary and Army; he does whatever he thinks is good for the administration of the State or the administration of the province. This is since the *Shari'ah* did not limit specific work for the governor, but rather limited the work of the governor or leader to ruling and authority, and that he is acting on behalf of the *Khalifah* and is a leader over a specific place, and this is according to what the Messenger did.

Rather the *Shari'ah* gave the *Khalifah* the right to appoint general and specific governorships, according to what he sees from the actions, and that is apparent from the action of the Messenger ﷺ. Built upon the limiting of the leadership of the leader or the governorship of the governor to a city or region by the Messenger ﷺ, article fifty-two was drafted which divided the State into provinces and districts.

Article 53

The *Khalifah* appoints the governors. The *'Ummal* (workers) are appointed by the *Khalifah* and by the governors if they have been delegated that power. The preconditions of the governor and *'Ummal* are the same as the conditions for the assistants, so it is imperative that they are free, just, Muslim, adult men and are from the people who have the capability to do what they are assigned to, and they are chosen from the people of *Taqwa* (God fearing) and power.

The evidence for this article is the action of the Messenger ﷺ and the companions after him. The Messenger ﷺ used to

undertake the empowerment of the governors or leaders of the lands, and used to empower them with the full governorship as what happened with Amr b. Hazm, who was the governor over the whole of Yemen. In the same manner, the Messenger ﷺ would sometimes empower someone with part of the responsibilities from the governorship, as what happened with Mu'adh Bin Jabal and Abu Musa, who were sent to provinces independent of each other in Yemen, and said to them

«يَسِّرَا وَلَا تُعَسِّرَا، وَبَشِّرَا وَلَا تُنْفِرَا، وَتَطَاوَعَا»

“Show leniency (to people); don’t be hard upon them; give them glad tidings; and don’t create aversion; and work in collaboration.” (agreed upon narration reported from Abu Musa). The fact that the governor is permitted to appoint *’Ummal* in his governorship this is taken from the fact that the *Khalifah* can entrust the governor to appoint *’Ummal*.

With respect to making the conditions for the governors the same as those for the assistants, this is since the governor is like the assistant in that he is acting on behalf of the *Khalifah* in ruling - so he is a ruler - and so the same conditions that apply to the *Khalifah* apply to him, since the conditions for the assistant are the same as those for the *Khalifah*. Therefore, it is a condition that he is male, due to his ﷺ words

«لَنْ يُفْلِحَ قَوْمٌ وَلَّوْا أَمْرَهُمْ امْرَأَةً»

“Never will succeed such a nation that makes a woman their leader .” (reported by Al-Bukhari from Abu Bakrah). And the appointment in the narration is the ruling, by the evidence of his ﷺ words ***“their leader”***, and the word ***“their leader”*** if it is next to governor, and governorship/ appointment, then the meaning of governor and appointment is specified as ruling and authority.

It is a condition that he be free since the slave does not possess himself and so cannot be a ruler over others. He must be a Muslim, due to His (swt) words

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

“And never will Allah give the disbelievers over the believers a way [to overcome them].” (TMQ 4:141). He should be adult and sane due to the narration

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ»

“The pen is lifted from three (their actions are not recorded)” (reported by Abu Dawud from 'Ali Bin Abi Talib (ra)) which includes

«عَنْ الصَّبِيِّ حَتَّى يَبْلُغَ ... وَعَنْ الْمَعْتُوهِ حَتَّى يَبْرَأَ»

“The child until he reaches puberty ... and the lunatic until he regains sanity”. And in another narration from Abu Dawud from 'Ali b. Abi Talib (ra),

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنِ الْمَجْنُونِ الْمَغْلُوبِ عَلَى عَقْلِهِ حَتَّى يَفِيقَ، وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ»

“The Messenger of Allah said the pen is lifted from three (their actions are not recorded): a lunatic whose mind is deranged till he is restored to consciousness, from a sleeper until he awakes and from a boy till he reaches puberty.” and in the same manner the narration from Ahmad from 'A'ishah (ra) who said that the Messenger of Allah ﷺ said

«رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنِ الْمَعْتُوهِ حَتَّى يَعْقِلَ...»

“The pen is raised from three (their actions are not recorded): from the boy until he reaches puberty, from a sleeper

till he awakes, and from the insane person till he restores his senses...” and from the understanding of raising of the pen is that he is not accountable for action, and the raising of the pen raises the rule, so it would not be correct for them to undertake the implementation of the rules, or in other words, the authority.

In the same manner, it is a condition that he be just, since Allah (swt) made justice a condition for the witness and so, therefore, by greater reasoning it is a necessity for the ruler, due to the words

﴿يَتَأْتِيهِمُ الَّذِينَ ءَامَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا﴾

“**O you who have believed, if there comes to you a disobedient one with information, investigate.**” (TMQ 49:6), so He (swt) ordered the verification for the word of the *fasiq*, and the rule of the ruler has to be accepted without any verification, so it is not permitted for the ruler to be from those whose word is not accepted and whose rule requires verification.

It is a condition that he is from the people of capability and ability to carry out what he has been appointed to do from the actions of ruling, since the Messenger ﷺ said to Abu Dharr

«إِنِّي أَرَاكَ ضَعِيفًا»

“**I see that you are weak**” (reported by Muslim from Abu Dharr), and in another narration

«يَا أَبَا ذَرٍّ، إِنَّكَ ضَعِيفٌ، وَإِنَّهَا أَمَانَةٌ»

“**O Abu Dharr, you are weak and this is a trust**”, which is evidence that whoever is weak or incapable of undertaking the burdens of ruling is not suitable to be a governor.

The Messenger ﷺ used to choose the governors from the people who were suitable for rule and the people of knowledge who were known for *Taqwa*, and he chose them from the people who would do the best in what they were appointed, and would

fill the hearts of their subjects with *Iman* and the dignity of the State. It is narrated from Sulayman Bin Buraydah from his father who said

«كَانَ رَسُولُ اللَّهِ ﷺ إِذَا أَمَرَ أَمِيرًا عَلَى جَيْشٍ أَوْ سَرِيَّةٍ أَوْصَاهُ فِي خَاصَّتِهِ بِتَقْوَى اللَّهِ وَمَنْ مَعَهُ مِنَ الْمُسْلِمِينَ خَيْرًا...»

“Whenever the Messenger of Allah ﷺ appointed a leader over an army or a detachment, he would especially exhort him to fear Allah, and be good to the Muslims who are with you” (reported by Muslim), and the governor is the leader over his governorship and ,therefore, falls under the meaning of this narration.

Article 54

The governor has the mandatory powers of ruling and responsibility over the tasks of the departments in his governorship as a delegate of the *Khalifah*, so he has all the powers in his province that the assistant has in the State. He has leadership over the people of his province and control over everything that is connected with it apart from the finances, judiciary and Army. However, the police come under his leadership from the angle of implementation not administration.

Its evidence is that the governor is the delegate of the *Khalifah* in the position that he was appointed to and so he has the mandatory powers of the *Khalifah* in that position, and he is similar to the assistant with respect to the general control if his governorship was a general one; in other words, he has been given the general control in that position. He has specific control in the issues that he was appointed to alone if his governorship

was specific, and he has no mandatory powers for control in other than that.

The Messenger ﷺ used to appoint the governors to unrestricted governorships in ruling, such as when he ﷺ sent Mu'adh to Yemen and made him in charge of the prayer and *Sadaqah*. And some were appointed a specific governorship in a particular aspect, such as when he appointed Farwah Bin Masyak over the tribes *Murad* and *Mathij* and *Zabid*, and sent Khalid Bin Said Bin Al-'Aas with him over the charity. Accordingly, Mu'adh had a general governorship over the prayer and charity, whereas the governorship of Farwah Bin Masyak was specific to the prayer, and that of Khalid Bin Said to the charity.

In the same manner, the Messenger ﷺ would send some governors and not teach them how to proceed - he sent 'Ali b. Abi Talib (ra) to Yemen and did not teach him anything due to his ﷺ knowledge of him and his capability. He would send others and teach them how to proceed - he ﷺ sent Mu'adh to Yemen and he said to him

«كَيْفَ تَقْضِي إِنْ عَرَضَ لَكَ قَضَاءٌ قَالَ أَقْضِي بِكِتَابِ اللَّهِ قَالَ فَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ قَالَ فَسُنَّةُ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ فَإِنْ لَمْ يَكُنْ فِي سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَجْتَهِدُ رَأْيِي وَلَا أَلُو قَالَ فَضَرَبَ صَدْرِي فَقَالَ الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِمَا يُرْضِي رَسُولَهُ»

“What will you rule by?” He said: “By the Book of Allah.” He ﷺ said: “What if you do not find the rule?” He said: “By the Sunnah of the Messenger of Allah.” He said: “What if you do not find the rule?” He said: “I will exert my own opinion.” Upon this the Messenger of Allah ﷺ said: “Praise be to Allah Who guided the envoy of the Messenger of Allah to what satisfies His Messenger” (reported by Ahmad, Al-Tirmidhi, Al-Darimi and Abu Dawud, with the wording from Ahmad). Ibn Qudama mentioned similar to it in *Al-Mughni* and *Al-Amidi* in

Al-Ihkam, so the narration is *mashhur*, and recognised scholars have taken it, and so from this angle it is considered *Hasan*.

Accordingly, it is permitted to appoint governors to general governorships or specific ones, as it is permitted to explain to them how to carry out their work in detail or in general.

Though it is permitted for the *Khalifah* to appoint governors to a general governorship, and to a specific governorship, it is confirmed from the general governorship of Mu'awiyah that he become independent of the *Khalifah* at the time of 'Uthman (ra), and the authority of 'Uthman over him was not apparent. After the death of 'Uthman (ra), the *Fitnah* occurred because Mu'awiyah had powers of ruling in all issues in the land of *Al-Sham*. And it is confirmed since the days of the weakness of the Abbasid *Khulafaa'* that independence of governorates occurred, to the point that the *Khalifah* had no authority over them except for prayers being made and money being stamped in his name. From this, the bestowing of general governorships caused harm to the Islamic State, and for that reason the governorship of the governor is specific to that which does not lead to independence from the *Khalifah*. Since it is the Army, finances, and judiciary which enable the independence, because the Army is the power, and the finance is the support for life, and the judiciary makes apparent the protection of the rights and the establishment of the punishments, so accordingly the governorship for the governors is a specific governorship in other than the judiciary, Army and finance, since if they are in the hands of the governor, they can cause the danger of independence, and what that entails for the security of the State. Based upon this the second part of this article was drafted.

As for the final part, the governor is a ruler and it is imperative that he has the power of execution and for this reason the police are under his leadership and his leadership over it is comprehensive in the same manner it is comprehensive over all issues apart from the three just mentioned. However, the police

are considered a part of the Army, so its administration is under them, but it is under the control of the governor.

Article 55

The governor is not obliged to inform the *Khalifah* of what he has carried out within his authorised command. If a new problem arises which has no precedent, he has to inform the *Khalifah* about it first, and he then proceeds according to the instructions of the *Khalifah*. If he was afraid that the problem would be exacerbated if delayed, he carries out the action and then must inform the *Khalifah* later on about the reason for not informing him beforehand.

The evidence is that the Prophet ﷺ empowered his governors and did not request them to inform him of what actions they undertook and they did not use to report to him about anything. Rather, they used to undertake their actions with full independence, each of them ruling in his leadership by his opinion; this was the manner of Mu'adh, and 'Attab Bin Asid, Al-'Ala' b. Al-Hadrami, and of all of the governors of the Messenger of Allah ﷺ – which indicates that the governor does not inform the *Khalifah* about anything from his actions. And in this regard, he is different from the assistant, since the assistant must inform the *Khalifah* about every action that he undertakes, whereas it is not obligatory upon the governor to inform the *Khalifah* about any of his actions.

It is obligatory that the *Khalifah* scrutinise every action the assistant undertakes, whereas it is not necessary for him to scrutinise every action of the governor, though he studies the situation of the governors and scrutinises the news from them. Accordingly, the governor has unrestricted action in his governorship, which is why Mu'adh said to the Messenger ﷺ when he was sent to Yemen ***“I will exert my own opinion.”***; so

this is evidence that the governor does not inform the *Khalifah*, rather he exercises his opinion. It is not forbidden to take the opinion of the *Khalifah* in the important issues, but he does not seek his opinion in unimportant issues in order that the interests of the people are not delayed. If something new occurs, he leaves it to the opinion of the *Khalifah*, because the empowerment of the governorship is that the *Khalifah* delegates the leadership of a city or region to the governor which is a governorship over all its people, and control in the known issues from his actions. So if a new issue which was not previously known occurred, it is left for the examination of the *Khalifah*, unless it was feared that this would be detrimental, in which case the governor undertakes the issue and then informs the *Khalifah*, since it was an issue that was unprecedented.

Article 56

Every province has an assembly elected from its people and championed by the governor. The assembly has the authority to participate in expressing opinions on administrative matters and not on ruling; and this would be for two objectives:

Firstly - providing the necessary information about the situation of the governorate and its needs to the governor and to express their opinion about that.

Secondly - in order to express their contentment or complaint about the rule of the governor over them.

The opinion of the assembly is not binding in the first instance and is binding in the second – if they complain about the governor he is removed.

It is not known that the governors of the Messenger ﷺ used to have a provincial assembly and it is not known from the

actions of the Messenger ﷺ that he selected a provincial assembly, and in the same way, nothing similar is known from the righteously guided *Khulafaa'*. From this, the provincial assembly is not part of the ruling apparatus or the *Shari'ah* rules, since the ruling apparatus is every action from the acts of ruling that has a *Shari'ah* evidence and anything which has no evidence is not from the ruling apparatus. Rather it is examined, and if it is a branch action that is derived from a root, then it follows that root and is from the styles and means that are permitted to be acted upon - in other words, from what is called administration; and if the root or branch action has evidence, then it is not correct to undertake it except in accordance with the *Shari'ah* evidence.

The provincial assembly is a branch action that is derived from the actions of the governorship, since the governor undertakes the ruling and administration, and the people of the province are more knowledgeable than him regarding the reality of their province and what occurs within it. Accordingly, it is vital that he has information that he can rely upon in order to undertake his actions and this information is present amongst the people of the province. Based upon this, it is imperative for him to refer to the people of the province while he is governing them.

This is from one angle, and from another angle his ruling of the province must be upon a basis that the people of the province are not angered, since if they are angry with him, then it would be upon the *Khalifah* to remove him, since the Messenger ﷺ removed Al-'Ala' b. Al-Hadrami as his *'Amil* over Bahrain since the delegation of 'Abd Qays complained about him as mentioned by Ibn Sa'd in *Al-Tabaqat*. Accordingly, it is imperative that the opinion of the people of the province regarding his undertaking the ruling over them is known as to whether they are content or not.

Additionally, it is imperative for him to refer to the people of his province while he is governing them, due to the following two reasons: to gather the information which the governor requires and for his knowledge of what the people of his province

think about his ruling – ,therefore, it is necessary for him to refer to the people of his province. To facilitate this reference, the governor establishes a provincial assembly which is elected from the people of his province, so that he can refer to it for the two issues: gathering information and knowing the opinion of the people of the province regarding the rule of the governor. Accordingly, this assembly does not have any consultation (*Shura*) or taking of opinion and nothing to do with the practice of ruling; rather it is to look into the administrative action. Its opinion is not binding but rather it is present in order to assist the governor. The first one who created this assembly was Umar b. 'Abd Al-'Aziz, since before he became the *Khalifah*, he was the governor over Madinah, and if he conducted a leadership assembly, he would meet two men of the opinion formers and leaders of their tribes, and said to them ***“It is an assembly of evil and strife, and you two have no action other than to examine me (monitor me), so if you see something which does not agree with the Truth, then remind me of Allah and make me fear Him”***. So the origin is to refer to the people of the province and the observation of the governor from their side and in order to achieve this reference, a provincial assembly is created beside the governor.

Article 57

The governor's term of office in a particular province is not to be long. He must be discharged whenever he becomes firmly established in his province or the people become enchanted with him.

Its proof is that the Messenger ﷺ used to appoint governors for a period and then remove them and no governor remained over his governorship for the complete period of the time of the Messenger ﷺ. Ibn Abdul Birr conveyed in *Al-Isti'ab* that the Messenger ﷺ appointed 'Uthman b. Abi Al-'As Al-

Thaqafi over Al-Ta'if; he remained there through the life of the Messenger of Allah ﷺ and the *Khilafah* of Abu Bakr (ra) and two years of the *Khilafah* of Umar (ra) at which point he was removed, which was a rare occurrence. For most of the time of the Messenger ﷺ, he ﷺ would not extend people's time as governors. This indicates that a governor is not appointed to a permanent governorship but rather he is appointed for a specific time and then removed. However, the length of his governorship is not defined by a specific period, long or short, since there is nothing that indicates that from the actions of the Messenger ﷺ. The most that can be said about the issue is that most of the time the Messenger ﷺ appointed a governor, he did not remain as a governor there through the whole of his ﷺ time; rather he ﷺ would appoint and then remove them.

Though it is permitted to extend the period of governorship such as what occurred with 'Uthman b. Abi Al-'As, however it is apparent that the length of the period of the governorship of Mu'awiyah in *Al-Sham* at the time of Umar (ra) and then 'Uthman (ra), caused what resulted in the strife which shook the entity of the Muslims, and so it is understood from this that lengthening the governorship of the governor in the province results in harm upon the Muslims and the State, and based upon this the words that the term of office for the governor is not to be long were drafted into this article.

Article 58

The governor is not moved from one province to another, since his appointment was for a general control in a specific area. Therefore, he has to be discharged first and then reappointed.

Its proof is the action of the Messenger ﷺ since he ﷺ used to remove the governors and it is not narrated that he transferred a

governor from place to place. Additionally, the governorship is one of the contracts that is completed by a direct wording, and the contract of the governorship is upon the province or city, which specifies the place where the governor rules, and the powers of ruling remain with him as long as the *Khalifah* does not remove him. So if he is not removed, then he remains a governor over it, and if he is transferred to another place, he is not removed from his first location by this transfer and is not appointed over the location that he has been transferred to, since his separation from the first location requires a direct word that he has been removed from the governorship over it and his appointment over the place that he has been transferred to requires a new contract of appointment which is specific to that location. Accordingly, it is taken that the governor is not transferred from location to location by transfer; rather he is removed from a location and appointed to a new governorship for the new location.

Article 59

The governor can be discharged if the *Khalifah* decides so or if the *Shura* council expresses dissatisfaction with him - whether justified or not - or if the provincial council expressed discontent with him. However, the governor can only be dismissed by the *Khalifah*.

Its proof is the action of the Messenger ﷺ; he appointed Mu'adh Bin Jabal over Yemen and then removed him from it without a reason, and removed Al-'Ala' b. Al-Hadrami who was his *'Amil* over Bahrain because the delegation of 'Abd Qays complained about him. Umar Bin Al-Khattab (ra) used to remove governors with and without reason; he removed Ziyad b. Abi Sufyan and did not announce a reason and removed Sa'd b. Abi Waqqas (ra) since the people complained about him, and said ***"I did not remove him due to incapability, nor treachery"***. This indicates that the *Khalifah* can remove the governors whenever he

pleases, and it is upon him to remove the governor if the provincial council complain about him, and similar to the people of his province is the *Shura* council (*Shura* and accounting), which represents all of the provinces.

Article 60

The *Khalifah* must examine the actions of the governors and continually assess their performance strictly. He must deputise people to monitor their situations, investigate them, and periodically gather all or some of them, and listen to the complaints of the subjects regarding them.

It is confirmed that the Prophet ﷺ used to test the governors when he appointed them as he did with Mu'adh and Abu Musa, and explained to them how they should proceed as he did with Amr b. Hazm in his message famous amongst the people of knowledge as mentioned by Ibn 'Asakir in *Tarikh Damascus* and Al-Hafiz said in *Al-Isaba*

«... واستعمل النبي ﷺ عمرو بن حزم على نجران ...»

“...and the Prophet ﷺ appointed Amr Bin Hazam over Najran...” and it is reported from him that the message he ﷺ wrote to him was regarding the obligations and blood money and other issues, as narrated by Abu Dawud and Al-Nasa'i, Ibn Hibban and Al-Darimi and others.

Likewise he ﷺ would make them aware of some important issues as he did with Abaan Bin Said when he appointed him over Bahrain as has been mentioned in *Al-Tabaqat* of Ibn Sa'd from Al-Waqidi when it was said to him

«اسْتَوْصِ بَعْدَ قَيْسٍ خَيْرًا، وَأَكْرَمِ سَرَائِهِمْ»

“Take good care of ‘Abd Qays and honour their leaders”. In the same way, it is confirmed that he ﷺ used to account the governors, investigate their circumstances and listen to what was narrated to him regarding their news. He ﷺ also used to account the governors over the taxation and expenditures; it is narrated by Abu Hamid Al-Sa’idi

«اسْتَعْمَلَ النَّبِيُّ ﷺ رَجُلًا مِنْ بَنِي أَسَدٍ يُقَالُ لَهُ ابْنُ اللَّتْبِيَّةِ عَلَى صَدَقَةٍ فَلَمَّا قَدِمَ قَالَ هَذَا لَكُمْ وَهَذَا أُهْدِيَ لِي فَقَامَ النَّبِيُّ ﷺ عَلَى الْمُنْبَرِ قَالَ سُفْيَانُ ابْنُ أَصْحَدٍ الْمُنْبَرِ فَحَمِدَ اللَّهَ وَأَتْنَى عَلَيْهِ ثُمَّ قَالَ مَا بَالُ الْعَامِلِ نَبَعْتُهُ فَيَأْتِي يَقُولُ هَذَا لَكَ وَهَذَا لِي فَهَلَّا جَلَسَ فِي بَيْتِ أَبِيهِ وَأُمِّهِ فَيَنْظُرُ أَيُّهُمَا لَهُ أَمٌّ لَا وَالَّذِي نَفْسِي بِيَدِهِ لَا يَأْتِي بِشَيْءٍ إِلَّا جَاءَ بِهِ يَوْمَ الْقِيَامَةِ يَحْمِلُهُ عَلَى رَقَبَتِهِ إِنْ كَانَ بَعِيرًا لَهُ رُغَاءٌ أَوْ بَقَرَةً لَهَا خُوَارٌ أَوْ شَاةً تَيَعُرُ ثُمَّ رَفَعَ يَدَيْهِ حَتَّى رَأَيْنَا غُفْرَتِي إِنْطِيهِ إِلَّا هَلْ بَلَغْتُ ثَلَاثًا»

“The Prophet ﷺ employed a man from the tribe of Al-Azd named Ibn Lutbiyyah as collector of Zakat. When the employee returned (with the collections) he said: " O Prophet ﷺ ! This is for you and this is mine because it was presented to me as gift." Messenger of Allah ﷺ rose to the pulpit and praised Allah and extolled Him. Then he said, "I employ a man to do a job and he comes and says: 'This is for you and this has been presented to me as gift'? Why did he not remain in the house of his father or the house of his mother and see whether gifts will be given to him or not? By Allah in Whose Hand is the life of Muhammad, if any one of you took anything wrongfully, he will bring it on the Day of Resurrection, carrying it on (his back), I will not recognize anyone of you, on the Day of Resurrection with a grunting camel, or a bellowing cow, or a bleating ewe." Then he raised his hands till we could see the whiteness of his armpits. Then he said thrice, "O Allah ! have I conveyed (Your Commandments)" (agreed upon narration).

Umar (ra) used to be severe in his monitoring of the governors and appointed Muhammad Bin Maslamah (ra) to

examine their circumstances and investigate them. He would gather the governors in the pilgrimage season in order to look into what they had done, listen to the complaints of the subjects regarding them and to remind them of the affairs of the governorship and establish their circumstances. It is narrated from Umar (ra) that one day he said to those around him

"أرأيتم إذا استعملت عليكم خير من أعلم ثم أمرته بالعدل، أكنت قضيت الذي علي قالوا: نعم، قال: لا، حتى أنظر في عمله، أعمل بما أمرته به أم لا"

"Do you think if I appointed over you the best whom I know, and then commanded him to be just, that have I completed what was upon me?" They replied, yes. He said "No, until I looked into his actions – did he act according to what I commanded him to or not" (reported from Al-Bayhaqi in *Al-Sunan* and Al-Shi'ab from Tawus). Umar (ra) used to strictly account his governors and 'Ummal, and his severity in accounting them would lead to him sometimes removing one of them due to a doubt for which there was no definite evidence and he used to remove them due to suspicion which did not reach the level of doubt. He was once asked about that and so said

"هان شيء أصلح به قوماً أن أبدلهم أميراً مكان أمير"

"The simplest thing I do to make things right for people is to relpce a leader (Amir) they have by another" (reported by Abu Shabah in *Al-Tarikh Al-Madinah*, and by Ibn Sa'd in *Al-Tabaqat* from Al-Hasan).

However, even with his strictness over them he used to allow them freedom of conduct, would protect their standing in government, listen to them and be attentive to their proofs. If the proof convinced him, he would not hide his conviction of it and his praise of the 'Amil. One day, it reached him that his 'Amil over Hims, 'Umayr b. Sa'd, said while upon the pulpit,

"لا يزال الإسلام منيعاً ما اشتد السلطان. وليست شدة السلطان قتلاً
بالسيف أو ضرباً بالسوط، ولكن قضاءً بالحق وأخذاً بالعدل"

"Islam will remain strong as long as the authority is rigorously strong. But strength in authority is not killking by sword or striking by whip, but it is judging according to Truth and applying justice" as mentioned by Ibn Sa'd in *Al-Tabaqat* from Said b. Suwayd. So Umar (ra) said regarding him,

"وددت لو أن لي رجلاً مثل عمير بن سعد أستعين به على أعمال
المسلمين"

"I wish I had a man like 'Umayr Bin Sa'd who I could rely upon in Muslims' matters".

The Amir of Jihad – The Military Department – The Army

Article 61

The War Department is in charge of all the affairs connected to the armed forces of the Army and police, and the treaties, tasks, military equipment and similar. They are also responsible for the military colleges, expeditions and everything that is necessary from the Islamic culture and the general culture necessary for the Army, as well as everything connected to war and its preparation, and the head of this department is called the Amir of Jihad

The war department is one of the State's institutions, and its head is called the *Amir of Jihad*, rather than the manager of *Jihad*. This is because the Messenger ﷺ used to call the leaders of the Army *Umara'*. Ibn Sa'd narrated that the Messenger of Allah ﷺ said

«أَمِيرُ النَّاسِ زَيْدُ بْنُ حَارِثَةَ، فَإِنْ قُتِلَ فَجَعْفَرُ بْنُ أَبِي طَالِبٍ، فَإِنْ قُتِلَ فَعَبْدُ اللَّهِ بْنُ رَوَاحَةَ، فَإِنْ قُتِلَ فَلْيَرْتَضِ الْمُسْلِمُونَ بَيْنَهُمْ رَجُلًا فَيَجْعَلُوهُ عَلَيْهِمْ»

“The leader (Amir) of the people is Zayd Ibn Haritha; if killed, then the Amir is Ja'far Ibn Abi Talib; and killed, the Amir is 'Abdullah Ibn Ruwahah; and if he was killed, let Muslims choose one man from among them and make him their Amir”. Al-Bukhari narrated that 'Abdullah Ibn Umar (ra) said:

«أَمَرَ رَسُولُ اللَّهِ ﷺ فِي غَزْوَةِ مُؤْتَةِ زَيْدُ بْنُ حَارِثَةَ...»

“The Messenger of Allah ﷺ appointed Zayd Ibn Haritha as Amir in the expedition of Mu'ta...” and Al-Bukhari narrated from Salamah b. Al-Akwa':

«وَعَزَّوْتُ مَعَ زَيْدٍ، وَكَانَ يُؤَمِّرُهُ عَلَيْنَا»

“I went on an expedition with Zayd; he was appointed Amir over us”. Al-Bukhari and Muslim narrated that ‘Abdullah Ibn Umar (ra) said:

«بَعَثَ النَّبِيُّ ﷺ بَعْثًا وَأَمَرَ عَلَيْهِمْ أُسَامَةَ بْنَ زَيْدٍ، فَطَعَنَ بَعْضُ النَّاسِ فِي إِمَارَتِهِ، فَقَالَ النَّبِيُّ ﷺ: أَنْ تَطْعُنُوا فِي إِمَارَتِهِ فَقَدْ كُنْتُمْ تَطْعُنُونَ فِي إِمَارَةِ أَبِيهِ مِنْ قَبْلُ، وَابْنُ اللَّهِ إِنْ كَانَ لَخَلِيفًا لِلْإِمَارَةِ...»

“The Prophet ﷺ sent an army detachment and made Usama bin Zaid its commander. Some people criticized (spoke badly of) Usama's leadership. So Allah's Prophet ﷺ got up and said, "If you people are criticizing Usama's leadership, you have already criticized the leadership of his father before. But Waaimullah (i.e., By Allah), he (i.e. Zaid) deserved leadership”
The companions, may Allah be pleased with them, used to call the Army of Mu'tah the Army of *Umara'*. Muslim narrated from Buraydah who said:

«كَانَ رَسُولُ اللَّهِ ﷺ إِذَا أَمَرَ أَمِيرًا عَلَى جَيْشٍ أَوْ سَرِيَّةٍ أَوْصَاهُ...»

“Whenever the Messenger of Allah ﷺ appointed anyone as a leader of an army or detachment, he would especially exhort him”.

The war department takes charge of all the issues connected to the armed force as mentioned in the article. The task of sending spies against the belligerent disbelievers is also the role of the war department and a special section is created for this purpose.

The evidences for this are well known from the life of the Messenger ﷺ:

The evidences for preparation being the words of Allah (swt)

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَءَاخِرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُمْ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فِي سَبِيلِ اللَّهِ يُوَفَّ إِلَيْكُمْ وَأَنْتُمْ لَا تُظْلَمُونَ﴾

“And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah knows. And whatever you spend in the cause of Allah will be fully repaid to you, and you will not be wronged.” (TMQ 8:60).

And what was reported by Ibn Sa’d in *Al-Tabaqat* from Makhul

«أَنَّ النَّبِيَّ ﷺ نَصَبَ الْمُنْجَبِقَ عَلَى أَهْلِ الطَّائِفِ أَرْبَعِينَ يَوْمًا»

“The Prophet ﷺ set up the ballista against the fortifications of Ta’if for forty days”. And Ibn Hisham mentioned in his *Sirah*

«حَدَّثَنِي مَنْ أَتَى بِهِ أَنَّ رَسُولَ اللَّهِ ﷺ أَوَّلُ مَنْ رَمَى فِي الْإِسْلَامِ بِالْمُنْجَبِقِ»

“Someone I trust narrated to me that the Messenger of Allah ﷺ was the first to use ballista in Islam”

The evidences for training: Muslim reported from ‘Uqbah Bin Amir who said: I heard the Messenger of Allah ﷺ say while on the pulpit

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ﴾ أَلَا إِنَّ الْقُوَّةَ الرَّمْيَ، أَلَا إِنَّ الْقُوَّةَ الرَّمْيَ، الرَّمْيَ، أَلَا إِنَّ الْقُوَّةَ الرَّمْيَ»

“And prepare against them whatever you are able of power” – Beware, strength consists in (reside or lie) archery,

strength consists in iarchery, strength consists in archery". Al-Bukhari reported from Salama Bin Al-Akwa' who said

«مَرَّ النَّبِيُّ ﷺ عَلَى نَفَرٍ مِنْ أَسْلَمَ يَنْتَضِلُونَ، فَقَالَ رَسُولُ اللَّهِ ﷺ: ارْمُوا بَنِي إِسْمَاعِيلَ فَإِنَّ أَبَاكُمْ كَانَ رَامِيًا، ارْمُوا وَأَنَا مَعَ بَنِي فَلَانٍ، قَالَ: فَأَمْسَكَ أَحَدُ الْقَرِيقَيْنِ بِأَيْدِيهِمْ، فَقَالَ رَسُولُ اللَّهِ ﷺ: مَا لَكُمْ لَا تَرْمُونَ؟ فَقَالُوا: يَا رَسُولَ اللَّهِ، تَرْمِي وَأَنْتَ مَعَهُمْ؟ قَالَ: ارْمُوا وَأَنَا مَعَكُمْ كُلُّكُمْ»

“Bani Isma’il ! Practice archery as your father Isma’il was a great archer. Keep on throwing arrows and I am with Bani so-and-so.” So one of the parties ceased throwing. Allah's Prophet said, "Why do you not throw?" They replied, "How should we throw while you are with them (i.e. on their side)?" On that the Prophet said ﷺ, "Throw, and I am with all of you”

And Muslim reported that:

«أَنَّ فُقَيْمًا اللَّحْمِيَّ قَالَ لِعُقْبَةَ بْنِ عَامِرٍ: تَخْتَلِفُ بَيْنَ هَذَيْنِ الْغُرَضَيْنِ وَأَنْتَ كَبِيرٌ يَشُقُّ عَلَيْكَ، قَالَ عُقْبَةُ: لَوْلَا كَلَامٌ سَمِعْتُهُ مِنْ رَسُولِ اللَّهِ ﷺ لَمْ أُعَانِيهِ، قَالَ الْحَارِثُ: فَقُلْتُ لِابْنِ شِمَاسَةَ: وَمَا ذَاكَ؟ قَالَ: إِنَّهُ قَالَ: مَنْ عَلِمَ الرَّمْيَ ثُمَّ تَرَكَهُ فَلَيْسَ مِنَّا، أَوْ قَدْ عَصَى»

“Fuqaim Al- Lakhmi said to Uqba b. Amir: You frequent between these two targets and you are an old man, so you will be finding it very hard. 'Uqba said: But for a thing I heard from the Holy Prophet ﷺ (may peace be upon him), I would not strain myself. Harith (one of the narrators in the chain of transmitters) said: I asked Ibn Shamasa: What was that? He said that he (the Holy Prophet) ﷺ said: Who learnt archery and

then gave it up is not from us. or he has been guilty of disobedience (to Allah's Prophet ﷺ) ”

And Abu Dawud reported a narration that Al-Hakim authenticated and Al-Dhahabi confirmed – with the wording from Abu Dawud – from Khalid b. Zayd who said: I used to shoot against 'Uqbah b. 'Amir, and so he passed by me that day and said: O Khalid, come out with us to shoot, and so I delayed. He said: O Khalid, come, I will tell you something that the Messenger of Allah ﷺ told me, and I will say it as the Messenger of Allah ﷺ said:

«إِنَّ اللَّهَ عَزَّ وَجَلَّ يُدْخِلُ بِالسَّهْمِ الْوَاحِدِ ثَلَاثَةَ نَفَرٍ الْجَنَّةَ: صَانِعُهُ يَحْتَسِبُ فِي صَنْعَتِهِ الْخَيْرَ، وَالرَّامِيَ بِهِ، وَمُنْبِلُهُ، وَارْمُوا وَارْكَبُوا، وَأَنْ تَرْمُوا أَحَبُّ إِلَيَّ مِنْ أَنْ تَرْكَبُوا، لَيْسَ مِنَ اللَّهِوَ إِلَّا ثَلَاثٌ: تَأْدِيبُ الرَّجُلِ فَرَسَهُ، وَمُلَاعَبَتُهُ أَهْلَهُ، وَرَمْيُهُ بِقَوْسِهِ وَنَبْلِهِ، وَمَنْ تَرَكَ الرَّمْيَ بَعْدَ مَا عَلِمَهُ رَغْبَةً عَنْهُ فَإِنَّهَا نِعْمَةٌ تَرَكَهَا أَوْ قَالَ كَفَرَهَا»

“Allah, Most High, will cause three persons to enter Paradise for one arrow: the maker when he has a good motive in making it, the one who shoots it, and the one who hands it; so shoot and ride, but your shooting is dearer to me than your riding. Everything with which a man amuses himself is vain except three (things): a man's training of his horse, his playing with his wife, and his shooting with his bow and arrow. If anyone abandons archery after becoming an adept through distaste for it, it is a blessing he has abandoned; or he said: for which he has been ungrateful”.

The evidence regarding the necessary culturing of the Army: Allah (swt) said in the chapter of *Al-Tawba*:

﴿إِنَّ اللَّهَ اشْتَرَى مِنَ الْمُؤْمِنِينَ أَنْفُسَهُمْ وَأَمْوَالَهُمْ بِأَنْ لَهُمُ الْجَنَّةُ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ فَيَقْتُلُونَ وَيُقْتَلُونَ وَعَدًا عَلَيْهِ حَقًّا فِي

التَّوْرَةِ وَالْإِنْجِيلِ وَالْقُرْآنِ ۚ وَمَنْ أَوْفَىٰ بِعَهْدِهِ مِنَ اللَّهِ ۚ فَاسْتَبَشِرُوا بَبَيْعِكُمُ
الَّذِي بَايَعْتُمْ بِهِ ۚ وَذَٰلِكَ هُوَ الْفَوْزُ الْعَظِيمُ ﴿١١١﴾ التَّائِبُونَ الْعَبَدُونَ
الْحَامِدُونَ السَّائِحُونَ الرَّاكِعُونَ السَّاجِدُونَ الْآمِرُونَ بِالْمَعْرُوفِ
وَالنَّاهُونَ عَنِ الْمُنْكَرِ وَالْحَافِظُونَ لِحُدُودِ اللَّهِ ۚ وَبَشِّرِ الْمُؤْمِنِينَ ﴿١١٢﴾

“Indeed, Allah has purchased from the believers their lives and their properties [in exchange] for that they will have Paradise. They fight in the cause of Allah, so they kill and are killed. [It is] a true promise [binding] upon Him in the Torah and the Gospel and the Qur'an. And who is truer to his covenant than Allah? So rejoice in your transaction which you have contracted. And it is that which is the great attainment; [Such believers are] the repentant, the worshippers, the praisers [of Allah], the travelers [for His cause], those who bow and prostrate [in prayer], those who enjoin what is right and forbid what is wrong, and those who observe the limits [set by] Allah. And give good tidings to the believers.” (TMQ 111-112). Allah (swt) did not make it sufficient to give one's life and money to be from those who are given glad tidings, but rather added that they are repenters, worshippers, fasting, praying, enjoining the good and forbidding the evil and observing the limits set by Allah (swt), upright upon them and not transgressing them, rather there is a safe distance to kept away from them.

Allah (swt) said

﴿يَتَأْتِيَهَا الَّذِينَ ءَامَنُوا أَصْبِرُوا وَصَابِرُوا وَرَابِطُوا وَاتَّقُوا اللَّهَ لَعَلَّكُمْ
تُفْلِحُونَ﴾ ﴿١١٣﴾

“O you who have believed, persevere and endure and remain stationed and fear Allah that you may be successful.”
(TMQ 3:200).

Al-Bukhari and Muslim reported from Sahl Bin Sa'd Al-Sa'idi that the Messenger of Allah ﷺ said

"رِبَاطُ يَوْمٍ فِي سَبِيلِ اللَّهِ خَيْرٌ مِنَ الدُّنْيَا وَمَا عَلَيْهَا، وَمَوْضِعُ سَوْطِ أَحَدِكُمْ مِنَ الْجَنَّةِ خَيْرٌ مِنَ الدُّنْيَا وَمَا عَلَيْهَا، وَالرُّوحَةُ يَرْوَحُهَا الْعَبْدُ فِي سَبِيلِ اللَّهِ، أَوْ الْغَدَوَةُ، خَيْرٌ مِنَ الدُّنْيَا وَمَا عَلَيْهَا"

“Observing Ribat (e.g., guarding the Islamic frontier for the sake of Allah) for a single day is far better than the world and all that it contains. A place in Jannah as small as the whip of your horse is far better than the world and all that it contains. An endeavour (fighting) in the Cause of Allah in the evening or in the morning is far better than the world and all that it contains.”

And Al-Bukhari reported from 'Abd Allah b. Abi 'Awfa that the Messenger of Allah ﷺ said

"وَأَعْلَمُوا أَنَّ الْجَنَّةَ تَحْتَ ظِلَالِ السُّيُوفِ"

“Know that paradise lies under the shades of swords”.

Al-Bukhari reported from 'Abd Al-Rahman b. Jabir that the Messenger of Allah ﷺ said

"مَا اغْبَرَّتْ قَدَمَا عَبْدٍ فِي سَبِيلِ اللَّهِ فَتَمَسَّهُ النَّارُ"

“(never happen) that the feet soiled with dust while (doing Jihad) in the way of Allah will be touched by the fire”

Al-Hakim reported a narration which he authenticated, and Al-Dhahabi confirmed his authentication, from 'Imran b. Husayn that the Messenger of Allah ﷺ said

"مَقَامُ الرَّجُلِ فِي الصَّفِّ فِي سَبِيلِ اللَّهِ أَفْضَلُ عِنْدَ اللَّهِ مِنْ عِبَادَةِ الرَّجُلِ سِتِّينَ سَنَةً"

The place of a man in the lines (fighting) in the Cause of Allah is better to Allah than sixty years of a his worship".

Al-Bukhari reported from Abu Hurayrah that the Prophet ﷺ said

"إِنَّ فِي الْجَنَّةِ مِائَةَ دَرَجَةٍ أَعَدَّهَا اللَّهُ لِلْمُجَاهِدِينَ فِي سَبِيلِ اللَّهِ، مَا بَيْنَ الدَّرَجَتَيْنِ كَمَا بَيْنَ السَّمَاءِ وَالْأَرْضِ"

"In Jannah there are a hundred grades which Allah has prepared for those who fight in His Cause; and the distance between any two of those grades is like the distance between the heaven and the earth".

Muslim reported from Anas who said:

"فَدَنَا الْمُشْرِكُونَ، فَقَالَ رَسُولُ اللَّهِ ﷺ: قُومُوا إِلَى جَنَّةٍ عَرْضُهَا السَّمَوَاتُ وَالْأَرْضُ، قَالَ: يَقُولُ عُمَيْرُ بْنُ الْحُمَامِ الْأَنْصَارِيُّ: يَا رَسُولَ اللَّهِ، جَنَّةٌ عَرْضُهَا السَّمَوَاتُ وَالْأَرْضُ؟ قَالَ: نَعَمْ، قَالَ: بَخٍ بَخٍ، فَقَالَ رَسُولُ اللَّهِ ﷺ: مَا يَحْمِلُكَ عَلَى قَوْلِكَ بَخٍ بَخٍ؟ قَالَ لَا وَاللَّهِ يَا رَسُولَ اللَّهِ إِلَّا رَجَاءٌ أَنْ أَكُونَ مِنْ أَهْلِهَا، قَالَ: فَإِنَّكَ مِنْ أَهْلِهَا، فَأَخْرَجَ تَمْرَاتٍ مِنْ قَرْنِهِ فَجَعَلَ يَأْكُلُ مِنْهُنَّ، ثُمَّ قَالَ: لَيْنُ أَنَا حَيْثُ حَتَّى أَكُلَ تَمْرَاتِي هَذِهِ إِنَّهَا لَحَيَاةٌ طَوِيلَةٌ، قَالَ: فَرَمَى بِمَا كَانَ مَعَهُ مِنَ التَّمْرِ ثُمَّ قَاتَلَهُمْ حَتَّى قُتِلَ"

"When the polytheists came near, the Messenger of Allah (PBUH) said, "Now stand up and proceed towards Jannah which is as wide as are the heavens and the earth." 'Umair bin Al-Humam (May Allah be pleased with him) asked: "Is Jannah as wide as are the heaven and the earth?" The Messenger of Allah ﷺ replied in the affirmative. 'Umair

remarked: "Great!" The Messenger of Allah ﷺ asked him what had urged him to say so. He replied: "Nothing, O Messenger of Allah! But hope that I might become one of the inhabitants of Jannah." The Messenger of Allah ﷺ said, "You will definitely be among them." 'Umair then took some dates out of his quiver and began to eat them, but after a short time he said: "If I survive till I eat my dates, it will mean a long life." So he threw away the dates which he had with him and then fought with the enemy till he was killed."

The evidence of encouragement to fight:

Allah (swt) said

﴿فَقَاتِلْ فِي سَبِيلِ اللَّهِ لَا تُكَلَّفُ إِلَّا نَفْسَكَ وَحَرِّضِ الْمُؤْمِنِينَ ۗ عَسَى اللَّهُ أَنْ يَكُفَّ بَأْسَ الَّذِينَ كَفَرُوا ۚ وَاللَّهُ أَشَدُّ بَأْسًا وَأَشَدُّ تَنكِيلًا﴾

"So fight, [O Muhammad], in the cause of Allah; you are not held responsible except for yourself. And encourage the believers [to join you] that perhaps Allah will restrain the [military] might of those who disbelieve. And Allah is greater in might and stronger in [exemplary] punishment." (TMQ 4:84).

And He (swt) said

﴿يَا أَيُّهَا النَّبِيُّ حَرِّضِ الْمُؤْمِنِينَ عَلَى الْقِتَالِ ۖ إِنْ يَكُنْ مِنْكُمْ عِشْرُونَ صَابِرُونَ يَغْلِبُوا مِائَتِينَ ۚ وَإِنْ يَكُنْ مِنْكُمْ مِائَةٌ يَغْلِبُوا أَلْفًا مِنَ الَّذِينَ كَفَرُوا ۚ بِأَنَّهُمْ قَوْمٌ لَا يَفْقَهُونَ﴾

"O Prophet, urge the believers to battle. If there are among you twenty [who are] steadfast, they will overcome two

hundred. And if there are among you one hundred [who are] steadfast, they will overcome a thousand of those who have disbelieved because they are a people who do not understand.” (TMQ 8:65).

Ibn Ishaq reported saying:

”ثُمَّ خَرَجَ رَسُولُ اللَّهِ ﷺ إِلَى النَّاسِ فَحَرَّضَهُمْ وَقَالَ: وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ، لَا يُقَاتِلُهُمُ الْيَوْمَ رَجُلٌ فَيُقْتَلُ صَابِرًا مُحْتَسِبًا مُقْبِلًا غَيْرَ مُدْبِرٍ إِلَّا أَذْخَلَهُ اللَّهُ الْجَنَّةَ ... ”

“Then the Messenger of Allah ﷺ went out to the people and incited (encouraged) them by saying: By the One who the soul of Muhammad is in His Hand, he who fights today and is killed (martyred) maintaining patience, expecting reward from Allah, and attacking and not retreating, then Allah will cause him to enter Paradise”.

Ahmad reported with an authentic chain from Abu Hurayrah who said:

”... فَتَنَظَّرَ فَرَآنِي فَقَالَ: يَا أَبَا هُرَيْرَةَ، فَقُلْتُ: لَبَّيْكَ رَسُولَ اللَّهِ، قَالَ فَقَالَ: اهْتِفْ لِي بِالْأَنْصَارِ وَلَا يَأْتِينِي إِلَّا أَنْصَارِي، فَهَتَفْتُ بِهِمْ فَجَاءُوا، فَأَطَافُوا بِرَسُولِ اللَّهِ ﷺ فَقَالَ: تَرَوْنَ إِلَيَّ أَوْبَاشَ قُرَيْشٍ وَأَتْبَاعِهِمْ؟ ثُمَّ قَالَ بِيَدَيْهِ إِحْدَاهُمَا عَلَى الْأُخْرَى: خَصَدًا حَتَّى تُوَافُونِي بِالصَّفَا ... ”

“...so he looked and saw me, and said: O Abu Hurayrah. I said: I am present, I am present Messenger of Allah, and so he said: Call the Ansar (supporters) to me, and no one other than them should come to me. So I called them, and they came; then they came around the Messenger of Allah ﷺ who ﷺ said: Do you see the rabble of Quraysh and their followers?: kill them until you meet me at Safa (and he was) tying his hands together.”

Muslim reported from 'Abbas b. 'Abd Al-Muttalib who said,

"شَهِدْتُ مَعَ رَسُولِ اللَّهِ ﷺ يَوْمَ حُنَيْنٍ ... فَقَالَ رَسُولُ اللَّهِ ﷺ: أَيُّ عَبَّاسٍ، نَادِ أَصْحَابَ السَّمُرَةِ، فَقَالَ عَبَّاسٌ - وَكَانَ رَجُلًا صَيِّتًا - فَقُلْتُ بِأَعْلَى صَوْتِي: أَيُّ أَصْحَابِ السَّمُرَةِ، قَالَ: فَوَاللَّهِ لَكَأَنَّ عَطْفَتَهُمْ حِينَ سَمِعُوا صَوْتِي عَطَفَهُ الْبَقَرُ عَلَى أَوْلَادِهَا، فَقَالُوا: يَا لَبَّيْكَ يَا لَبَّيْكَ ... "

"I witnessed the day of Hunayn with the Messenger of Allah ﷺ...The Messenger of Allah ﷺ said O 'Abbas, call out to the people of Samura (the tree under which the companions gave the Prophet the Bay'a of Ridwan before the treaty of Al-Hudaybiyah). 'Abbas (who was a man with a loud voice) called out at the top of his voice: Where are the people of Samura? And by Allah, when they heard my voice, they came back (to us) as cows come back to their calves, and said: We are present, we are present".

The evidences to have patience and more endurance than the enemy at the battlefield:

Allah (swt) said,

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا لَقِيتُمْ فِئَةً فَاثْبُتُوا وَاذْكُرُوا اللَّهَ كَثِيرًا لَّعَلَّكُمْ تُفْلِحُونَ﴾

"O you who have believed, when you encounter a company [from the enemy forces], stand firm and remember Allah much that you may be successful." (TMQ 8:45).

And He (swt) said,

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَصْبِرُوا وَصَابِرُوا وَرَابِطُوا وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ﴾

“O you who have believed, persevere and endure and remain stationed and fear Allah that you may be successful.” (TMQ 3:200).

And He (swt) said,

﴿ثُمَّ إِنَّ رَبَّكَ لِلَّذِينَ هَاجَرُوا مِنْ بَعْدِ مَا فُتِنُوا ثُمَّ جَاهَدُوا وَصَبَرُوا إِنَّ رَبَّكَ مِنْ بَعْدِهَا لَغَفُورٌ رَحِيمٌ﴾

“Then, indeed your Lord, to those who emigrated after they had been compelled [to renounce their religion] and thereafter fought [for the cause of Allah] and were patient - indeed, your Lord, after that, is Forgiving and Merciful”. (TMQ 16:110).

Muslim reported from Jabir who said

«لَمْ نُبَايِعْ رَسُولَ اللَّهِ ﷺ عَلَى الْمَوْتِ، إِنَّمَا بَايَعْنَاهُ عَلَى أَنْ لَا نَفِرَ»

“We did not give pledge to the Messenger of Allah ﷺ upon death, we rather pledged not to flee (from battle)”.

Al-Bukhari reported from 'Abdullah Bin Abi Awfa that the Messenger of Allah ﷺ said

"إِذَا لَقِيتُمُوهُمْ فَاصْبِرُوا"

“When you meet them (on the battlefield), have patience”.

The proof for preparing the Army such that they are not taken by surprise:

Al-Bukhari reported from Abu Hurayrah that the Prophet ﷺ said

"... طُوبَى لِعَبْدٍ آخِذٍ بِعِنَانٍ فَرَسِهِ فِي سَبِيلِ اللَّهِ، أَشَعَتْ رَأْسُهُ، مُغْبِرَةً قَدَمَاهُ،
إِنْ كَانَ فِي الْحِرَاسَةِ كَانَ فِي الْحِرَاسَةِ، وَإِنْ كَانَ فِي السَّاقَةِ كَانَ فِي السَّاقَةِ، إِنْ
اسْتَأْذَنَ لَمْ يُؤْذَنَ لَهُ، وَإِنْ شَفَعَ لَمْ يُشَفَّعْ"

"Paradise (Tuba is a tree in Paradise) is for one who holds the reins to strive in the cause of Allah, with his hair unkempt and his feet covered with dust. If he is appointed in the vanguard, he is perfectly satisfied with his post of guarding, and if he is appointed in the rearward, he accepts his post with satisfaction; (he is so simple and unambiguous that) that if he asks for permission, he is not permitted, and if he intercedes, his intercession is not accepted".

Al-Tirmidhi reported a narration that he considered *Hasan* from Ibn 'Abbas who said: I heard the Messenger of Allah ﷺ say

"عَيْنَانِ لَا تَمَسُّهُمَا النَّارُ: عَيْنٌ بَكَتْ مِنْ خَشْيَةِ اللَّهِ، وَعَيْنٌ بَاتَتْ تَحْرُسُ فِي
سَبِيلِ اللَّهِ"

"Two eyes will not be touched by the hellfire: an eye that weeps out of the fear of Allah, and an eye that spends the night on guard in the cause of Allah".

Al-Hakim reported a narration he authenticated, and which Al-Dhahabi confirmed, from Ibn Umar that the Prophet ﷺ said

"أَلَا أُنبِئُكُمْ بِلَيْلَةٍ أَفْضَلَ مِنْ لَيْلَةِ الْقَدْرِ، حَارِسٌ حَرَسَ فِي أَرْضٍ خَوْفٍ لَعَلَّهُ
أَنْ لَا يَرْجِعَ إِلَى أَهْلِهِ"

“Should I not tell you about a night better than the night of Qadar? (It is one during which ..) A guard (in Jihad) guarding in a land of war (fear) and not sure wheather he will be back to his family.”

Article 62

Jihad is obligatory upon the Muslims and military training is compulsory. Every male Muslim who has reached the age of 15 is obligated to undertake military training in order to prepare him for Jihad. Recruitment is an obligation of sufficiency.

The evidence for the article is from the Book and the *Sunnah*; Allah (swt) says

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ﴾

“Fight them until there is no [more] fitnah and [until] worship is [acknowledged to be] for Allah.” (TMQ 2:193), and He (swt) said

﴿فَقَاتِلُوا أِيمَةَ الْكُفْرِ﴾

“Fight the leaders of disbelief.” (TMQ 9:12), and it is narrated from Anas that the Messenger of Allah ﷺ said

«جَاهِدُوا الْمُشْرِكِينَ بِأَمْوَالِكُمْ وَأَيْدِيكُمْ وَأَلْسِنَتِكُمْ»

“Fight the polytheists (idol worshippers) with your wealth, hands and tongues” (reported by Ahmad and Al- Nasa’i with the wording from Al-Nasa’i, and both Al- Nasa’i and Al-Hakim authenticated it and Al-Dhahabi confirmed it). And Mu’adh b. Jabal said that the Prophet ﷺ said

«دُرُوءَةُ سَنَامِ الْإِسْلَامِ الْجِهَادُ فِي سَبِيلِ اللَّهِ»

“The peak of Islam is Jihad in the cause of Allah”
(reported by Ahmad).

When modern warfare requires military training in order to undertake what is required by the *Shari’ah* in terms of defeating the enemy and liberating lands, then this training would be obligatory in the same manner that *Jihad* is, in accordance with the *Shari’ah* principle

(ما لا يتم الواجب إلا به فهو واجب)

“That, without which the obligation cannot be accomplished, is itself an obligation”.

This is because the order to fight encompasses training, since it is a general order

﴿وَقَاتِلُوهُمْ﴾

“and fight them”, which is an order to fight as well as an order to do whatever makes you capable of fighting. Above and beyond that, Allah (swt) said

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ﴾

“And prepare against them whatever you are able of power.” (TMQ 8:60), and training and expert military experience is preparation of power, since they are required in order to become capable of fighting. Accordingly, training is part of the power that must be prepared in the same way as military equipment, supplies and so on.

As for recruitment, in other words, to make people soldiers in the Army under military preparedness on a permanent basis, which means the creation of *Mujahidin* who practically undertake the *Jihad* and its requirements, then this is an obligation since undertaking the *Jihad* is a constant obligation which

continues irrespective of whether the enemy attacks us or not. Accordingly, recruitment is an obligation of sufficiency.

As for *Jihad* being an obligation upon the Muslims and not upon the rest of the subjects of the State – this is because the type of *Jihad* which has been made obligatory in the verses regarding *Jihad* is the fighting against the disbelievers, and this does not come from the disbelievers, and so ,therefore, according to this meaning the *Jihad* cannot be obligatory upon the non-Muslims. However, it is permitted for the non-Muslim subjects of the State to fight the enemy alongside the Muslims, since Quzman who was an idol-worshipper went out and fought the idol-worshippers alongside the companions of the Messenger of Allah ﷺ on the day of Uhud and the Messenger of Allah ﷺ did not forbid him doing so.

With respect to it being an obligation upon the men and not women – this is due to what is reported from Ahmad and Ibn Maja through 'Aisha (ra) who said: O Messenger of Allah ﷺ, do women have to do *Jihad*? He ﷺ said

«نَعَمْ عَلَيْهِنَّ جِهَادٌ لَا قِتَالٌ فِيهِ: الْحَجُّ وَالْعُمْرَةُ»

“Yes, they have to take part in Jihad in which no fighting takes place: Hajj and 'Umra”.

And as for limiting it to those fifteen and above, this is due to the narration reported by Al-Bukhari from Nafi' who said

«حَدَّثَنِي ابْنُ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ رَسُولَ اللَّهِ ﷺ عَرَضَهُ يَوْمَ أُحُدٍ وَهُوَ ابْنُ أَرْبَعٍ عَشْرَةَ سَنَةً فَلَمْ يُجْزَنِي، ثُمَّ عَرَضَنِي يَوْمَ الْخَنْدَقِ وَأَنَا ابْنُ خَمْسٍ عَشْرَةَ سَنَةً فَأَجَازَنِي»

“Ibn Umar told me that the Messenger of Allah called him to present himself in front of the Prophet ﷺ on the Day of Uhud, and he was fourteen at the time, and the Prophet ﷺ did not allow him to take part in that battle, and then on the Day of

Al-Khandaq when he was fifteen, he gave him permission to take part". Nafi' said I met Umar b. 'Abd Al-Aziz when he was the *Khalifah* and mentioned this narration to him, so he said: This is the limit between the young and adult, and he wrote to his workers to make it obligatory upon anyone who reached the age of fifteen. In other words, he ordered to prepare provisions for them in the army office.

Article 63

The Army has two sections: the reserve section, which is all those Muslims who are capable of carrying arms, and the section of regular soldiers, who get salaries from the State budget in the same manner as the civil servants.

Its evidence is the evidence of the obligation of *Jihad*, since every Muslim is obligated with *Jihad* and its training and accordingly all of the Muslims are a reserve army since *Jihad* is obligatory upon them. As for making a section of them to be full-time regular soldiers, its evidence is the rule

(ما لا يتم الواجب إلا به فهو واجب)

"That, without which the obligation cannot be accomplished, is itself an obligation",

since the carrying out of *Jihad* consistently, along with the defence of the Islamic lands and protecting the honour of the Muslims from the disbelievers cannot be done except with a permanent army. Therefore, it is obligatory upon the leader to establish a permanent army.

As for setting a salary for those soldiers in the same manner as the civil servants, with respect to the non-Muslims, this is clear since they are not required to fight against disbelievers, but if they undertake *Jihad*, it is accepted from them, at which

time it is permitted to give them money as well as to give them a share from the portion of booty which is intended to bring the hearts closer to Islam – due to what is narrated by Al-Zuhri

«أَنَّ النَّبِيَّ ﷺ أَتَاهُمْ لِقَوْمٍ مِنَ الْيَهُودِ قَاتَلُوا مَعَهُ»

“That the Messenger of Allah gave a portion to some people among the Jews who fought along with him” (reported by Al-Tirmidhi and it is from the Maraseel of Al-Zuhri, and Ibn Qudamah used it as an evidence in *Al-Mugni*). Also, it is narrated that

«أَنَّ صَفْوَانَ بْنَ أُمَيَّةَ خَرَجَ مَعَ النَّبِيِّ ﷺ يَوْمَ حُنَيْنٍ وَهُوَ عَلَى شِرْكِهِ، فَأَسْهَمَ لَهُ، وَأَعْطَاهُ مِنَ الْغَنَائِمِ مَعَ الْمُؤَلَّفَةِ قُلُوبُهُمْ»

“Safwan b. Umayya accompanied the Prophet ﷺ on the day of Hunayn and he was a disbeliever. He was given a share of the spoils, which was part of the portion given to those hearts it was intended to win.”, as mentioned by Ibn Qudama in *Al-Mughni* and Ibn Hisham in his *Sirah*.

Al-Bukhari reported from Abu Hurayrah that the Messenger of Allah ﷺ said

«يَا بِلَالُ قُمْ فَأَذِّنْ لَا يَدْخُلُ الْجَنَّةَ إِلَّا مُؤْمِنٌ وَإِنَّ اللَّهَ لَيُؤَيِّدُ هَذَا الدِّينَ بِالرَّجُلِ الْفَاجِرِ»

“O Bilal, Stand up and announce in public: none will enter Paradise but a believer, and Allah may support this religion (Deen) with a wicked man”. And Ibn Hisham mentioned in his *Sirah* that Quzman, who was an idol worshipper, accompanied the companions of the Messenger of Allah ﷺ on the day of Uhud, and he killed seven or eight of the idol worshippers, and so the Messenger ﷺ said

«إِنَّ اللَّهَ لَيُؤَيِّدُ هَذَا الدِّينَ بِالرَّجُلِ الْفَاجِرِ»

“Truly Allah supports this religion (Deen) with a wicked man”. Al-Shawkani mentioned this in his book *Al-Darari Al-Mode’a* and *Nayl Al-Awtar* and it is confirmed by those who wrote the life of the Prophet ﷺ.

All of these evidences indicate the permissibility for a disbeliever to be part of the Islamic Army and to give him money due to his presence there. Additionally, the definition of employment is a contract upon a service for recompense, which indicates that employment is permitted upon every service that the employer could use from an employee, and so it includes employing someone to be in the Army, and for partaking in fighting, since it is a service. Accordingly, the generality of the evidence for employment upon any service is an evidence for the permissibility of employing a disbeliever to be in the Army and partake in fighting. However, it must be under the flag of the Muslims and not a flag of disbelief as is clarified in the reality of the evidences mentioned, since the disbelievers who fought with the Muslims did so under the flag of the Muslims and not under the flag of disbelief; in other words, they fought as soldiers as part of the Muslims’ Army. Built upon this, it is permitted for the people of *Dhimmah* to fight in the Army of the Muslims for a wage, which can occur if the *Khalifah* considers that their fighting as soldiers in the Army of the Muslims bring a benefit to the Muslims and there is no harm as a result, in which case, it is permitted to accept them in the Army of the Muslims and to pay them. In other words, this is made permitted for them. However, if there was harm from their entering the Islamic Army, then this permitted issue from amongst the permitted issues would be forbidden due to the harm, in accordance with the rule regarding harm as is mentioned in its section in *Usul*.

This is with regards to the non-Muslim. With respect to the Muslim, even though *Jihad* is an act of worship, it is permitted to employ a Muslim for the military and fighting, due to the generality of the evidence for employment. Also, employment upon the undertaking of an act of worship whose benefit is not

limited to the one who did the act is permissible, due to the words of the Prophet ﷺ

«إِنَّ أَحَقَّ مَا أَخَذْتُمْ عَلَيْهِ أَجْرًا كِتَابُ اللَّهِ»

“You are most entitled to take wages for the teaching of the Book of Allah.”(reported by Al-Bukhari from Ibn ‘Abbas). Teaching the Quran is an act of worship, so in the same manner that it is permitted to employ a Muslim in order to teach the Quran, or to lead the prayer, or to make the call to prayer, which are all acts of worship, it is likewise permitted to employ someone for the sake of *Jihad* and to be in the Army. Moreover, there is evidence on the hiring of Muslims for *Jihad* even though it is a duty upon them. Ahmad and Abu Dawud narrated that ‘Abdullah Bin Umar (ra) said that the Prophet ﷺ said

«لِلْغَازِي أَجْرُهُ وَلِلْجَاعِلِ أَجْرُهُ وَأَجْرُ الْغَازِي»

“The warrior (Al-Ghazi) has his reward and one who equips him (Al-Ja’il) has his reward and that of the warrior”. Al-Ghazi is the one who personally goes out to battle, while the Ja’il is the one who fights on someone else’s behalf for a wage. It is written the *Al-Muhit* dictionary “Al-Ji’ala...is the amount given to someone doing an action...and what is assigned to a Ghazi if he fights on your behalf for a wage.” *Ajr* is used to mean both wage and reward. As for what is well known among people that *Ajr* always means the reward which comes from Allah (swt) to His servant for doing a good deed and that *Ijarah* is the reward for an action from one person to another which includes employment – in actual fact, there is no support for this differentiation. Rather what the language stated is that the *Ajr* is the reward for an action. It is mentioned in the *Al-Muhit* dictionary that *Ajr* is the reward for the action, like the *Ijara*. The meaning of the narration is that *Ghazi* has his reward while the *Ja’il* has his wage, since the word can have many meanings, and the indication in the narration would specify the intended one. In this case, the word *Ghazi* indicates that what is meant by *Ajr* is reward from Allah (swt),

and the word *Al-Ja'il* indicates that *Ajr* means wage, because each of them is an indication that specified the intended meaning. Al-Bayhaqi narrated on the authority of Jubayr b. Nufayr who said:

«مَثَلُ الَّذِينَ يَغُزُونَ مِنْ أُمَّتِي، وَيَأْخُذُونَ الْجُعَلَ، وَيَتَقَوَّوْنَ عَلَى عَدُوِّهِمْ، مَثَلُ أُمِّ مُوسَى، تُرْضِعُ وَلَدَهَا، وَتَأْخُذُ أَجْرَهَا»

“The Messenger ﷺ said, “Those of my nation (Ummah) who fight and take wages to strengthen themselves against their enemy are like the mother of Moses who breastfeeds her son and takes her payment.” and similar is reported by Said Bin Mansur, and the meaning of the word *Ajr* here is wage. Therefore, the Army has salaries in the same manner as the civil servants.

Article 64

The Army is given banners and flags and the Head of State (the *Khalifah*) gives the banners to whomever he appoints to lead the Army, whereas the flags are provided by the brigadiers.

1. *Al-Liwa'* (banner) and *Al-Rayah* (flag) – from the linguistic angle, they both mean *Al-'Alam* (sign) as mentioned in the *Al-Muhit* dictionary. The *Shari'ah* gave each of them, in terms of usage, a *Shari'ah* meaning along the following manner:

The Banner is white: written upon it *La Ilaha Illa Allah, Muhammad Rasul Allah* in black, which is given to the *Amir* or leader of the Army. It is used to identify his position, and follows the position. The evidence for attaching the banner to the *Amir* of the Army:

«أَنَّ النَّبِيَّ ﷺ دَخَلَ مَكَّةَ يَوْمَ الْفَتْحِ وَلَوَاؤُهُ أَبْيَضُ»

“The Prophet ﷺ entered Makkah on the Day of Conquest and his banner was white” reported by Ibn Maja from Jabir, and on

that day the Messenger ﷺ was the leader of the Army. In the same way, the Messenger of Allah ﷺ used to attach the banners to the leaders of the armies that he sent out, as has been mentioned in “‘*Uyun Al-Athar fi Funun Al-Maghazi Wal-Shama’il Wal-Siyar*” by Imam Al-Hafiz Abi Al-Fateh who is known by the name Ibn Sayyid Al-Nas who died in 734 AH, where he stated “...on Monday, four days before Safr of the eleventh year of Hijrah, the Messenger of Allah ﷺ ordered the people to prepare to fight against the Romans. When it was the next day, he called Usamah Bin Zayd, and said to him go to the place your father was killed, so prepare the horses and you are the Amir of the Army...and so when it was Wednesday the Messenger of Allah ﷺ began to feel pain...then when it was Thursday he gave a white banner to Usamah, then he said go out on the expedition in the path of Allah, and fight those who disbelieved in Allah, and so he went out with the banner tied...”

The Flag is black: written upon it *La Ilaha Illa Allah, Muhammad Rasul Allah* in white, which is given to the heads of the divisions of the Army (brigade, unit, etc.). The evidence is that during Khaybar in his role as the leader of the Army, the Messenger ﷺ said,

«لَأُعْطِيَنَّ الرَّايَةَ، أَوْ لِيَأْخُذَنَّ الرَّايَةَ، عَدَا رَجُلًا يُحِبُّهُ اللَّهُ وَرَسُولُهُ، أَوْ قَالَ يُحِبُّ اللَّهُ وَرَسُولَهُ، يَفْتَحُ اللَّهُ عَلَيْهِ، فَإِذَا نَحْنُ بِعَلِيِّ وَمَا نَرْجُوهُ، فَقَالُوا: هَذَا عَلِيٌّ، فَأَعْطَاهُ رَسُولُ اللَّهِ ﷺ الرَّايَةَ، فَفَتَحَ اللَّهُ عَلَيْهِ»

“I will give the flag tomorrow, or tomorrow the flag will be taken by a man who is loved by Allah and His Prophet , and (Khaibar) will be conquered through him, (with Allah's help)” While every one of us was hopeful to have the flag, it was said, “Here is `Ali” and the Prophet gave him the flag and Khaibar was conquered through him (with Allah's Help)” (agreed upon from Salama b. Al-Akwa’). `Ali (ra) at that time was considered as the head of a battalion or brigade of the Army. Similarly in the narration from Al-Harith Bin Hassan Al-Bakri,

«قدمنا المدينة فإذا رسول الله ﷺ على المنبر، وبلال قائم بين يديه، متقلد السيف بين يدي الرسول ﷺ، وإذا رايات سود، فسألت: ما هذه الرايات؟ فقالوا: عمرو بن العاص قدم من غزاة»

“We came to Madinah and saw the Prophet ﷺ on the pulpit, with Bilal standing in front of him holding his sword, and there were black flags in front of the Messenger ﷺ. I asked ‘What are these flags?’ They said Amr Bin Al-’Aas has just arrived from an expedition” reported by Ahmad in *Al-Musnad* and elsewhere, and in the report of Al-Tirmidhi from Al-Harith Bin Hassan Al-Bakri he said the wording,

قدمت المدينة فدخلت المسجد فإذا هو غاص بالناس وإذا رايات سود تحفق وإذا بلال متقلد السيف بين يدي رسول الله ﷺ قلت ما شأن الناس؟ قالوا يريد أن يبعث عمرو بن العاص وجها. فمعنى «إذا رايات سود»

“I came to Madinah, entered the Mosque and found it crowded with people, and there were black flags fluttering, and Bilal was holding a sword in front of the Prophet ﷺ. I said ‘What is the matter?’ They said: ‘He ﷺ wants to send Amr Bin Al-’Aas to somewhere”. The meaning of ***“black flags”*** is that there were many flags with the Army, and when the *Amir* of the Army was one person – and that was Amr Bin Al-’Aas, this means that they must have been with the heads of the brigades and units.

This is how the banners were attached to the *Amir* of the Army, and the flags with the rest of the Army, its divisions, brigades and units. Accordingly, there is a single banner and many flags for each army.

Therefore, the banners are a sign for the *Amir* of the Army and no one else, and the flags are signs with the soldiers.

2. The banner is attached to the *Amir* of the Army, and it is a sign for his position; in other words, it stays with the position of the

Amir. As for during the battle, the leader of the battle, irrespective of whether it was the *Amir* of the Army or another leader who was appointed by the *Amir* of the Army, is given the flag to carry it during the fighting on the battlefield, and for this reason, it is called *Umm Al-Harb* (the mother of the war) since it is carried by the leader of the battle in the battlefield.

For that reason for the duration for which the war takes place, each leader of a battle has a flag, and this is an issue known at that time, and the continuation of the flying of the flag is an evidence of the strength of the leader of the battle. It is part of the administrative organisation that is required according to the customs of war.

Lamenting the deaths of Zayd, Ja'far and Ibn Rawahah, the Messenger of Allah ﷺ told the people before the soldiers delivered the news

«أَخَذَ الرَّايَّةَ زَيْدٌ فَأُصِيبَ، ثُمَّ أَخَذَهَا جَعْفَرٌ فَأُصِيبَ، ثُمَّ أَخَذَهَا عَبْدُ اللَّهِ بْنُ رَوَاحَةَ فَأُصِيبَ»

“Zayd took the flag and was martyred, so Ja'far took the flag and was martyred, and so 'Abdullah Bin Rawahah took the flag and was martyred” (reported by Al-Bukhari).

In the same manner, if the war is taking place and the leader of the Army in the battlefield is the *Khalifah* himself, then it is permitted for the banner to be raised in the battlefield and not simply the flag alone. It is reported in the *Sirah* of Ibn Hisham that in the major Badr battle, both the banner and the flag were present on the battlefield. It is reported in the *Sirah* “Ibn Ishaq said: and the banner was given to Mus'ab Bin 'Umayr Bin Hashim Bin 'Abd Manaf Bin 'Abd Al-Dar. Ibn Hisham said: and it was white...and Ibn Ishaq said: and there were two black flags in front of the Messenger of Allah ﷺ: one with 'Ali Bin Abi Talib which was called *Al-'Uqab*, and the other with some of the Ansar”.

As for during times of peace, or at the end of the battle, then the flags are distributed in the Army with the divisions, brigades and units raising them...as is mentioned in the narration of Al-Harith Bin Hassan Al-Bakri regarding the Army of Amr Bin Al-'Aas.

The first banner to be tied in Islam was the banner of 'Abdullah Bin Jahsh, and a black flag with a white crescent was tied for Sa'd b. Malik. All of this indicates that it is imperative that the Army has flags and banners, and that the *Khalifah* is the one who assigns the banners to whomever he assigns over the Army. As for the flags, it is permitted for the *Khalifah* or the brigadiers to present them. The narration of Umm Salamah that the Messenger of Allah ﷺ said

«لَأُعْطِينَ الرَّايَةَ غَدًا رَجُلًا يُحِبُّ اللَّهَ وَرَسُولَهُ، وَيُحِبُّهُ اللَّهُ وَرَسُولُهُ... فَأَعْطَاهَا

عَلِيًّا»

“I will give the flag to a man who loves Allah and His Messenger, and Allah and His Messenger love him ... He ﷺ gave it 'Ali” shows the permissibility of the *Khalifah* doing so. The permissibility of the brigadiers presenting the flags to others can be understood from the narration of Al-Harith Bin Al-Hassan Al-Bakri which mentioned

"وإذا رايات سود"

“there were black flags”, since its meaning is that there were many flags with the Army while they had a single leader, which was Amr Bin Al-'Aas. Irrespective of whether they were returning from or leaving for an expedition, this means that flags were with the heads of the brigades, and there is nothing to indicate that it was the Messenger ﷺ who appointed the flags to them. However, it is permitted for the *Khalifah* to give the brigadiers the power to give the flags to the brigade heads, and this is more appropriate for discipline, even though all of this falls under what is permitted, or in other words, *Mubah*.

Article 65

The *Khalifah* is the Commander of the Army and he appoints the Chief of General Staff, a general for each brigade, and a commander for every division. The remaining ranks in the Army are appointed by the brigadiers and commanders. The appointment of a person in the General Staff is according to his level of military expertise and is carried out by the Chief of General Staff.

The *Khalifah* is the general leader for all of the Muslims in this world, in order to establish the rules of the *Shari'ah* and carry the Islam to the rest of the people. The main method to carry Islam to the rest of the world is *Jihad*, and so it is imperative that he undertakes *Jihad*, since the contract of the *Khalifah* is upon him personally, and ,therefore, it is not permitted for anyone else to undertake it. Accordingly, the management of the issue of *Jihad* is specific to the *Khalifah* and it is not permitted for anyone else to undertake it. Even though every Muslim undertakes *Jihad*, the undertaking of *Jihad* and the management of *Jihad* are two different things. *Jihad* is obligatory upon every Muslim, but the management of *Jihad* is for the *Khalifah* alone, and not anyone else. The *Khalifah* can appoint someone to carry out on his behalf what has been obligated upon him as long as he is under his observation and supervision, while it is not permitted to give him complete independence without his monitoring and supervision. The monitoring that the *Khalifah* undertakes here is not like the type of reporting that the assistant gives him; rather the one who he has delegated remains directly under his orders and direct supervision. The leadership of the Army can be given to whomever he pleases with the condition that they are under the control of the *Khalifah* and his direct supervision. It is not permitted for him to appoint someone without retaining direct supervision and control over him, which must not be simply symbolic. This is because the contract of the *Khilafah* is upon him personally and so it is obligatory for him to manage the affairs of

Jihad. Accordingly, what is said in other non-Islamic systems that the Head of State is the Commander and Chief of the Army, and this leadership is symbolic while another independent commander is appointed to the Head of the Army, is considered invalid according to the Islamic viewpoint, and is something that the *Shari'ah* does not agree to. Rather, the *Shari'ah* obligates that the *Khalifah* should be the practical Commander of the Army.

As for non-leadership positions in the technical, administrative or other matters, the *Khalifah* may appoint others to act independently on his behalf in the same manner as the governors, and it is not necessary for them to be under his direct control or for him to supervise them. Additionally, the Messenger ﷺ used to personally undertake the practical leadership of the Army and the leadership during the battles, and would appoint commanders over sections of the Army that would go out for battle expeditions without him. He ﷺ used to appoint a commander for each expedition, and sometimes would take the precaution of appointing someone else to succeed them if they were killed, as happened with the battle of Mu'tah. Al-Bukhari reported from 'Abd Allah b. Umar (ra) who said:

«أَمَرَ رَسُولُ اللَّهِ ﷺ فِي غَزْوَةِ مُؤْتَةَ زَيْدَ بْنَ حَارِثَةَ فَقَالَ رَسُولُ اللَّهِ ﷺ إِنْ قُتِلَ زَيْدٌ فَجَعْفَرٌ وَإِنْ قُتِلَ جَعْفَرٌ فَعَبْدُ اللَّهِ بْنُ رَوَاحَةَ»

“The Messenger of Allah appointed Zaid Bin Haritha a leader in Mu'tah expedition. He ﷺ said: if Zaid is killed, then Ja'far Bin Abi Talib takes the flag, and if Ja'far is killed, then 'Abdullah Bin Rawahah takes it”. Therefore, the *Khalifah* is the one who appoints the commander of the Army, appoints the brigadiers and gives them the banners and appoints the leaders of the divisions. The Army which was sent to *Al-Sham* like the Army of Mu'tah and the Army of Usamah was a single brigade, with the evidence being that the Prophet ﷺ had tied the banner for Usamah. The expeditions that fought in the Arabian Peninsula and returned back to Madinah, such as the expedition of Sa'd Bin

Waqas which he ﷺ sent towards Makkah, were all in the form of divisions. This indicates that the brigadiers and the commanders of the divisions are appointed by the *Khalifah*. It is not confirmed that the Prophet ﷺ appointed anyone other than leaders of the Armies and the commanders of the expeditions, which indicates that their appointment in the battlefield was left to their leaders.

With regards to the Chief of Staff who is responsible for the technical matters, he is similar to the Commander of the Army in terms of being appointed by the Head of State and he can be made independent and carry out his duties without being directly supervised by the *Khalifah*, although he has to be under his command.

Article 66

The Army is a unified entity which has specific bases. However, it is necessary that some of these bases are placed in different provinces and others in strategic locations. Some of the bases should be permanently mobile fighting forces. These bases are organised in numerous groups, with each group being given a number as a name, such as the first Army, the third Army, or they can be named after a province or district.

The Islamic Army is a single entity composed from several Armies, and each one is given a number: so it is said: the first Army, the third Army, or they are named according to the province or district, and it is said: the Army of *Ash-Sham*, the Army of *Misr*, and the Army of *San'a'* for example.

The Islamic Army is placed in specific bases, and in each base there is a group of soldiers, either a single Army, or division, or numerous Armies. However, it is obligatory to place these bases in different provinces, and some of them in military bases, and some of them in permanently mobile bases to be strike forces.

Each base is given a specific name, such as Al-Habanya Base, and each has a specific flag.

These arrangements, are either from permitted issues and ,therefore, left to the opinion of the *Khalifah* and his *Ijtihad*, such as naming every Army according to its province or district, or to assign a specific number for each of them, or they could be from the issues of

(ما لا يتم الواجب إلا به ...)

“Whatever is required to complete an obligation”

if they were necessary to protect the land, such as the arrangements of the Armies on the borders, and placing and putting the bases across various strategic locations to protect the land and so on.

Umar bin Al-Khattab (ra) used to divide the Army bases amongst the provinces, and so soldiers were assigned for Palestine and another for Moosel, and another in the centre of the State, and he used to have an Army with him prepared to fight upon the first indication.

Article 67

It is obligatory to provide the Army with the highest level of military education and raise its intellectual level as far as possible. Every individual in the Army should be given Islamic culture that enables him to have an awareness of Islam, to at least a general level.

This article comes under the generality of the words of the Messenger ﷺ

«طَلَبُ الْعِلْمِ فَرِيضَةٌ عَلَى كُلِّ مُسْلِمٍ»

“Seeking knowledge is a duty upon every Muslim”
reported by Ibn Maja from Anas Bin Malik, and Al-Zarkashi said

in *Al-Tadhkirah*: Al-Hafiz Jamal Al-Deen Al-Mizzi said: the chains of this report reach the level of *Hasan*. Al-Sakhawi said that it has a corroborating narration (*Shahid*) through Ibn Shahin with a chain whose men are all trustworthy. The word “knowledge” encompasses every type, including military, since military expertise has become a necessity for every army, and it is not possible to fight war and engage battles unless it has that expertise. Therefore, it has become obligatory due to the rule

(ما لا يتم الواجب إلا به فهو واجب)

“That, without which the obligation cannot be accomplished, is itself an obligation”.

As for the Islamic culture, it is a personal obligation for each person to learn whatever is required for them to undertake their actions, and anything else is an obligation of sufficiency, due to the words of the Prophet ﷺ

«مَنْ يُرِدِ اللَّهُ بِهِ خَيْرًا يُفَقِّهْهُ فِي الدِّينِ»

“When Allah wishes good for someone, He bestows upon him the understanding of Deen (Islam)” (agreed upon narration through Mu’awiyah, and reported by Al-Tirmidhi through Ibn ‘Abbas). This applies to the Army that conquers countries to convey the call to Islam, as it does for every Muslim, though it is more important for the Army. Regarding raising its intellectual level, this is a kind of awareness which is necessary to understand the *Deen* and life’s affairs. Perhaps the saying of the Prophet ﷺ

«قُرْبَ مُبْلَغٍ أَوْعَى مِنْ سَامِعٍ»

“it may be that the recipient of knowledge understands it better than the one who has heard it” (agreed upon from the narration of Abu Bakrah and the wording is from Al-Bukhari), is an indication of encouragement to have awareness. Also the Quran says,

﴿لِقَوْمٍ يَتَفَكَّرُونَ﴾

“For people who reflect” (TMQ 10:24), and He (swt) says,

﴿هُمْ قُلُوبٌ يَعْقِلُونَ﴾

“They have hearts (minds) by which they understand.” (TMQ 22:46), which indicates the status of thought.

Article 68

It is obligatory that each base should have sufficient numbers of officers of the Ggeneral Staff who possess expert military knowledge and experience in drawing up plans and running battles. The Army as a whole should possess as many of these officers as possible.

Its evidence is the same as article 67, based upon the rule

(ما لا يتم الواجب إلا به فهو واجب)

“That, without which the obligation cannot be accomplished, is itself an obligation”.

If military education is not digested theoretically through learning, and practically through continuous training and application, then it will not produce experience which enables one to engage in battles and to draw up plans. Therefore, providing expert military education is obligatory. Continuous study and training is also obligatory in order that the Army continues to prepare for *Jihad* and engagement at any moment. Since the Army exists in many bases and every one of them has to be able to engage in battle immediately, there should be an ample number of staff in each camp according to the principle

(ما لا يتم الواجب إلا به فهو واجب)

“That, without which the obligation cannot be accomplished, is itself an obligation”.

Article 69

It is obligatory to provide the Army with weapons, supplies and equipment, as well as all necessities and requirements, which enable it to carry out its mission as an Islamic Army.

Its evidence is the words of Allah (swt)

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَءَاخِرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُمْ﴾

“And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah.” (TMQ 8:60). So the preparation for fighting is a duty, and this preparation should be open so as to intimidate the enemies and the hypocrites from amongst the subjects. His (swt) saying,

﴿تُرْهِبُونَ﴾

“**To strike terror**” is the reason (*Illah*) for preparation. The preparation will not be complete unless the reason for which this legislation came has been achieved, which is intimidating the enemies and the hypocrites. Therefore, it is a duty to provide all the arms and equipment for the Army in order that intimidation is produced and by greater reasoning in order to ensure that the Army is capable of carrying out its mission which is *Jihad* to convey the call to Islam. When Allah (swt) addressed us

regarding preparation, He (swt) stated that the reason (*Illah*) for it is intimidating the known enemies, and those who are not apparent.

Allah (swt) said

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَءَاخِرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُمْ﴾

“And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah.” (TMQ 8:60). It is necessary to notice the precise accuracy of the verse, where Allah (swt) did not order Muslims to make preparation for the purpose of fighting, but rather for the purpose of intimidation, which is more profound. This is because the enemy’s knowledge of the force of the Muslims deters it from attacking them or confronting them. This is one of the greatest styles that can be used to win wars and attain victory.

The Internal Security

Article 70

The Department of Internal Security is responsible for everything related to security, and prevents anything that threatens the internal security. It protects the security of the land through the police, and does not resort to the Army except by the order of the *Khalifah*. The head of this department is called the (Manager of Internal Security). This department has branches in the provinces, each of which is called (Section of Internal Ssecurity) and the head of the section is called the Police Chief, *Sahib Al-Shurtah*, in the province.

The Department of Internal Security is responsible for anything pertaining to internal security and headed by the manager of internal security. This department would have a branch in each province called the internal security section, which will be headed by the Police Chief in the province who will be under the responsibility of the governor in terms of execution. He would follow the Department of Internal Security pertaining to administration; a matter that would be organised by a special law.

The Internal Security Department is the department responsible for administering everything linked to security. It takes charge of maintaining security within the country through use of the police force. This is the main means to maintain security. Hence, it is permissible for the Internal Security Department to use the police at any time, in any way it likes, and its orders must be implemented immediately. However, if the police require the help of the armed forces, a request is submitted to the *Khalifah*. He can order the Army to help the Internal Security Department or to provide it with a military force to help it in maintaining the security, or he can issue any order he sees fit.

He is also entitled to refuse such requests and demand that the police carry out the task themselves.

Article 71

The police (*Shurtah*) have two branches: the military police, who are under the command of the Amir of Jihad, in other words, the war department, and the police who are under the control of the Ruler to protect the security, and they are under the authority of the Department of Internal Security. The two branches have specific training and specific culture in order for them to carry out their responsibilities in the best manner.

Police forces are divided into two parts: the military police and the police that work under the command of the Ruler, who must have a special uniform and special signs specific for keeping security.

Al-Azhari said: “*Shurtah* of any thing is its best. This includes *Shurat* because they are the best soldiers. It is also said that *Shurtah* are the first group that come ahead of the Army. It is also mentioned that they are called *Shuratan* because they have signs that characterise them, in terms of uniform and status”, this is also chosen by Al-Asma’i. It is also mentioned in *Al-Qamus*: “*Shurtah*, where the individual is called *Shurat*, would mean the first battalion that attend the war and is ready for death, it is also the helper of the governors; and they were called so because they announced themselves through signs that characterise them.”

In regards to the military police, which is one of the divisions of the Army that has its sign, it comes ahead of the Army to control its matters, it is a part of the Army and follows the *Amir of Jihad*; in other words, it follows the war department.

Regarding the police that are put under the service of the rulers, they follow the Department of Internal Security. Al-Bukhari narrated from Anas:

«إِنَّ قَيْسَ بْنَ سَعْدٍ كَانَ يَكُونُ بَيْنَ يَدَيِ النَّبِيِّ ﷺ بِمَنْزِلَةِ صَاحِبِ الشُّرْطِ مِنْ الْأَمِيرِ»

“Qais bin Sa’d was to the Prophet ﷺ like a chief police officer to an Amir”. What is meant here is Qays Ibn Sa’d Ibn ‘Ubadah Al-Ansari Al-Khazraji. Al-Tirmidhi narrated it with the wording:

«كَانَ قَيْسُ بْنُ سَعْدٍ مِنَ النَّبِيِّ ﷺ بِمَنْزِلَةِ صَاحِبِ الشُّرْطِ مِنَ الْأَمِيرِ، قَالَ الْأَنْصَارِيُّ: يَعْنِي مِمَّا يَلِي مِنْ أُمُورِهِ»

“Qais bin Sa’d was to the Prophet ﷺ like a chief police officer to an Amir. Al-Ansari said: It means he was one that discharged his issues”.

The *Khalifah* is allowed to make all the police that are responsible for internal security part of the Army, in other words, that they are placed within the war department, and he is also permitted to make an independent department, in other words, an internal security department.

In this article it is adopted that this section will be independent; in other words, the police that are placed under the service of the rulers to protect their security must follow the Internal Security Department as an independent organisation that answer directly to the *Khalifah* like other State organisations. This is due to the narration from Anas mentioned previously about Qays Ibn Sa'd, and following the independence of the four departments related to *Jihad* as mentioned before. Each one of them would follow the *Khalifah*, rather than to be left all together as one organisation.

Thus the *Shurtah* would follow the Department of Internal Security.

Article 72

The most prominent issues that threaten the internal security that are under the responsibility of the Department of Internal Security to treat are: apostasy, rebellion and banditry, attacks on people's wealth, attacking people and their honour and co-operating with the people of suspicion who spy for the belligerent disbelievers.

The function of the Department of Internal Security is to protect the internal security of the State and the actions which could lead to a threat to internal security are many including:

Apostasy from Islam, rebellion against the State manifested in destructive activities and actions of sabotage such as strikes or the occupation of vital centres of the State, and aggression against private, public, or State property. It might also be through rebellion against the State by use of arms.

Other actions which undermine internal security include banditry, in other words, highway robbery, and attacking people to rob their wealth and killing them.

Similarly, the attack on the property of people by theft, looting, robbery, misappropriation, as well as attacks on people through assault, injuring, and killing, in addition to attacks on their honour through lying, slandering and rape.

One of the other tasks of the Internal Security Department is to deal with suspicious people and protecting the *Ummah* and the State from their danger and harm.

These are the most important actions that could threaten the internal security. The Department of Internal Security protects

the State and the people from all these actions. Therefore, whoever is declared an apostate, and is sentenced to death if he did not repent, then this department executes the death sentence. If those who declare apostasy are a group, then they have to communicate with them and ask them to return to Islam, and the State should not punish them if they repent, return to Islam and abide by the *Shari'ah* rules. If however, they insist on apostasy, then they are fought against. If they are small in number and the police force alone is able to fight against them, then they must proceed to do so, but if they are large in number and the police force is unable to overpower them, then they have to request the *Khalifah* to provide them with additional military force to help them. If this military force is not sufficient, then they must ask the *Khalifah* to order the Army to provide them with assistance.

This is concerning apostates. However, in regards to people who rebel against the State, if they do not use arms and limit themselves to destruction and sabotage by strikes, demonstrations, occupation of vital centres of the State, along with aggression against private, public and State properties through demolition, then the Internal Security Department restricts itself to using the police force in order to prevent such destructive actions. If it is not able to prevent the aggression, it requests the *Khalifah* to provide it with a military force in order to stop the destruction and sabotage from those who rebelled against the State.

However if the people who rebel against the State use weapons and were able to establish themselves in an area and became a force that the Department of Internal Security is unable to subdue, and it was unable to eliminate through the use of the police force alone, then it requests the *Khalifah* to provide it with a military force or an army force, depending on its need in eliminating the rebellion. Before it fights against them, the department should communicate with them to see what complaints they may have. It should ask them to return to obedience and the *Jama'ah* and to surrender their arms. If they

respond favourably and return back, then the State should hold back from fighting them. If they reject and insist on rebelling, then it fights against them in order to discipline them and not to annihilate and destroy them. It fights against them, so that they turn back to obedience and give up rebellion and surrender their arms.

In regards to those that use violence, such as the highway robbers, who attack people, forcibly obstruct the highways, steal property and kill, the Department of Internal Security will dispatch a police force to pursue them and impose the relevant punishment upon them, which may be killing and crucifying, amputating their opposite limbs or deporting them to another place, according to the verse:

﴿إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِّنْ خِلْفٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ﴾

“Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land.” (TMQ 5:33).

The fighting against these people is not like fighting against rebels who fight against the State. Fighting against the rebels is to discipline them while fighting against the highway robbers is to kill and crucify, so they are fought against when they fight and when they turn back. They are treated as outlined in the verse. Whoever killed and took property, he is killed and crucified; and whoever killed and did not take property, he is killed but not crucified; and whoever took property without killing, his hand and leg will be amputated from opposite sides without killing; and whoever raised arms and scared the people and did not kill or take property, he is only exiled from his area to another place or country far away from the State.

The Department of Internal Security restricts itself to using the police force in maintaining security. It does not use other than the police force except when the police force is unable to maintain internal security. In that case, it requests the *Khalifah* to provide it with a military force or an army, according to what is required.

With regards to aggression against property by stealing, misappropriation, robbing or looting; or aggression against lives by use of force, wounding or killing; or aggression against honour by lying, slander, or rape, the Department of Internal Security prevents these things by its vigilance, guards and patrols, and also by implementing the verdicts of the judges against those who perform aggression against the property, lives and honour. All this requires the use of the police force alone.

The police are entrusted with keeping the public order, supervision over the internal security and carrying out all aspects of implementation. This is due to the mentioned narration from Anas who reported that the Messenger ﷺ used to keep Qays Ibn Sa'd before him like a police chief. This indicates that police are stationed before the rulers, which means they undertake whatever the rulers want of the execution force for implementing the *Shari'ah*, keeping order and protecting security. This is in addition to conducting patrols, which involves patrolling during the night to pursue thieves and arrest wrongdoers and the wicked. 'Abd Allah b. Mas'ud (ra) was a leader over the night patrols at the time of Abu Bakr (ra). Umar bin Al-Khattab (ra) used to take charge of night patrols by himself, taking his servant in his company and sometimes 'Abd Al-Rahman b. 'Awf (ra). Therefore, it is wrong that some Islamic countries make the owners of the shops appoint guards at night to guard their houses, or appoint guards given by the State at the cost of the owners of the shops. This is because this work is part of the night patrolling which is the duty of the State and of the functions of the police. So, people are not charged with it and nor charged with its costs.

With regards to dealing with the suspicious people who are the people that pose harm and danger to the State entity, to the community or to the individuals; these types of suspects must be pursued by the State. Whoever, from the *Ummah* has knowledge of any of these must report it. The evidence for this is what Al-Bukhari and Muslim reported from Zayd b Arqam when he said:

«كُنْتُ فِي غَزَاةٍ، فَسَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي يَقُولُ: لَا تُنْفِقُوا عَلَى مَنْ عِنْدَ رَسُولِ اللَّهِ حَتَّى يَنْفَضُوا مِنْ حَوْلِهِ، وَلَئِنْ رَجَعْنَا مِنْ عِنْدِهِ لَيُخْرِجَنَّ الْأَعَزُّ مِنْهَا الْأَذَلَّ، فَذَكَرْتُ ذَلِكَ لِعَمِّي أَوْ لِعَمْرٍ، فَذَكَرَهُ لِلنَّبِيِّ ﷺ، فَدَعَانِي، فَحَدَّثَنِي...»

“While I was taking part in an expedition (Ghaza), I heard `Abdullah bin Ubai (bin Abi Salul) saying: "Don't spend on those who are with Allah's Prophet ﷺ, that they may disperse and go away from him. If we return (to Medina), surely, the more honorable will expel the meaner amongst them." I reported that (saying) to my uncle or to `Umar who, in his turn, informed the Prophet ﷺ of it. The Prophet ﷺ called me and I narrated to him the whole....” In the narration by Muslim,

«فَأَتَيْتُ النَّبِيَّ ﷺ فَأَخْبَرْتُهُ بِذَلِكَ»

“I came to the Prophet ﷺ and informed him of that”. Ibn Ubay was well known for going back and forth to the disbelievers who were at war with the Muslims, and his relations with them such as those with the Jews around Madinah and the enemies of Islam. Here, it is required to closely examine upon the context of this example so as not to mix it with espionage on the citizens, which is prohibited due to His (swt) saying:

﴿وَلَا تَجَسَّسُوا﴾

“And spy not on each other.” (TMQ 49:12); therefore, spying is only limited to the suspects.

The suspicious people are those who go back and forth to the belligerent disbelievers, either practically or in terms of their ruling (in other words, potentially), and that is because spying is allowed on the belligerent disbelievers as part of the war policy, and for preventing harm from falling upon Muslims. Additionally, the *Shari'ah* evidences in this subject include all the belligerent people. This is because if they were actual belligerents, then the obligation of spying on them is quite clear. If they were potential belligerents, then spying on them is allowed for war is expected with them at any time.

Thus any citizen that frequently visits the warring disbelievers would be under suspicion due to his contact with those we are permitted to spy on, in other words, the belligerent disbelievers.

The details of this issue will be as follows:

1. Spying on the actual belligerent disbelievers is obliged upon the State; a matter which, besides the above mentioned evidences, is emphasised by the rule:

(ما لا يتم الواجب إلا به فهو واجب)

“that, without which the obligation cannot be accomplished, is itself an obligation.”

This is because the knowledge of the force of the enemy, its plans, its objectives and its strategic locations and the like are necessary to defeat the enemy. This is undertaken by the War Department, and it includes the citizens that make contact with the actual belligerent disbelievers, since in origin there is not usually contact between the citizens and the belligerents, as the relation between them is a relation of war.

2. Spying on the potential belligerent disbelievers is allowed; and it is obligatory upon the State to prevent any harm, such as, when

it is feared they would help the actual belligerents or join them. The potential belligerent disbelievers are of two types:

The first: The potential belligerent disbelievers in their country whom the War Department would spy on, and it would be the War Department who was responsible for spying upon them.

The second: The potential belligerent disbelievers that enter our country, such as the ambassadors, the covenants and their like. These have to be put under observation and spying by the Internal Security Department.

The Department of Internal Security takes charge of surveillance and spying on the citizens who frequently visit the officials amongst the potential belligerent disbelievers or their representatives in our country. The War Department also takes charge of the citizens who frequently visit the officials amongst the actual belligerent disbelievers or their representatives in their own country. This however requires two conditions:

The first: There should appear clear evidence through surveillance, carried out by the War Department and Internal Security of the officials amongst the potential belligerent disbelievers or their representatives that the frequent visits to these disbelievers or their representatives, inside or outside the State, are not natural and attract attention.

The second: Whatever is discovered by the two departments has to be presented to the judge of Hisbah; and then the judge of Hisbah rules upon the matter.

If such a case arises then it is allowed for the Department of Internal Security to spy on those citizens that make such frequent visits to the officials amongst the potential belligerent disbelievers or their representatives in our country. It is also permitted for the War Department to spy on the citizens that make frequent visits to the officials amongst the potential belligerent disbelievers and their representatives in their own country. These are the evidences related to all of this:

1. Spying on Muslims is *Haram* as stipulated in this verse. Allah (swt) says:

﴿وَلَا تَجَسَّسُوا﴾

“And spy not on each other.” (TMQ 49:12)

This is general prohibition of spying and it has to continue as general unless there is specific evidence. This is confirmed by the narration reported by Ahmad and Abu Dawud with a chain from Al-Miqdad and Abu Umamah when they said:

«إِنَّ الْأَمِيرَ إِذَا ابْتَغَى الرَّيْبَةَ فِي النَّاسِ أَفْسَدَهُمْ»

“The Messenger of Allah ﷺ said: When a ruler seeks to make imputations against the people, he corrupts them.” Therefore, spying on a Muslim is prohibited. This rule also applies on the people of the *Dhimmah* from the citizens of the State. Thus spying is prohibited upon the citizens, Muslims and non-Muslims.

2. Spying on actual belligerent disbelievers, such as those who are at war with us and on the potential belligerent disbelievers, such as those who enter our country with covenant or under our protection like ambassadors and others, or the actual belligerent disbelievers in their own country, is allowed. It is in fact obligatory to spy on the actual belligerent and on the potential belligerent in case of harm.

The evidences are clear in the life of the Messenger of Allah ﷺ, which are as follows:

- It was reported in the *Sirah* of Ibn Hisham about the expedition of 'Abd Allah b. Jahsh (ra), where he ordered him to travel for two days without opening the letter he wrote for him. After 'Abd Allah b. Jahsh (ra) travelled for two days he opened the letter of the Messenger of Allah ﷺ and read it. It read

«إِذَا نَظَرْتَ فِي كِتَابِي هَذَا، فَامْضِ حَتَّى تَنْزِلَ نَخْلَةً بَيْنَ مَكَّةَ وَالطَّائِفِ،
فَتَرَصَّدَ بِهَا قُرَيْشًا، وَتَعْلَمَ لَنَا مِنْ أَخْبَارِهِمْ»

“If you read this letter of mine, travel till you reach Nakhlah between Makkah and Ta’if where you observe Quraysh movement and collect their news for us.”

It was reported in the *Sirah* of Ibn Hisham regarding the events of the battle of Badr that Ibn Ishaq said:

«رَكِبَ رَسُولُ اللَّهِ ﷺ هُوَ وَأَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُمَا حَتَّى وَقَفَ عَلَى شَيْخٍ مِنَ الْعَرَبِ،
فَسَأَلَهُ عَنْ قُرَيْشٍ وَعَنْ مُحَمَّدٍ وَأَصْحَابِهِ وَمَا بَلَغَهُ عَنْهُمْ، فَقَالَ الشَّيْخُ: لَا أُخْبِرُكُمْ
حَتَّى تُخْبِرَانِي مِمَّنْ أَنْتُمَا؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: إِذَا أَخْبَرْتَنَا أَخْبَرْنَاكَ. قَالَ: أَذَاكَ
بِذَاكَ؟ قَالَ: نَعَمْ. قَالَ الشَّيْخُ: ... وَبَلَغَنِي أَنَّ قُرَيْشًا خَرَجُوا يَوْمَ كَذَا وَكَذَا، فَإِنْ كَانَ
الَّذِي أَخْبَرَنِي صَدَقَنِي، فَهُمْ الْيَوْمَ بِمَكَانٍ كَذَا وَكَذَا لِلْمَكَانِ الَّذِي فِيهِ قُرَيْشٌ، فَلَمَّا
فَرِغَ مِنْ خَبَرِهِ قَالَ: مِمَّنْ أَنْتُمَا؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: نَحْنُ مِنْ مَاءٍ، ثُمَّ انْصَرَفَ عَنْهُ،
قَالَ يَقُولُ الشَّيْخُ: مِنْ مَاءٍ، أَمْ مِنْ مَاءِ الْعِرَاقِ؟ ثُمَّ رَجَعَ رَسُولُ اللَّهِ ﷺ إِلَى أَصْحَابِهِ،
فَلَمَّا أَمْسَى بَعَثَ عَلِيَّ بْنَ أَبِي طَالِبٍ وَالزُّبَيْرُ بْنُ الْعَوَّامِ وَسَعْدُ بْنُ أَبِي وَقَّاصٍ فِي نَفَرٍ
مِنْ أَصْحَابِهِ، رِضْوَانُ اللَّهِ عَلَيْهِمْ، إِلَى مَاءِ بَدْرٍ يَلْتَمِسُونَ الْخَبَرَ عَلَيْهِ، أَيُّ غِيُونًا عَلَى
قُرَيْشٍ»

“The Messenger of Allah ﷺ and Abu Bakr rode till they met an Arab sheik. He ﷺ asked him about Quraysh, and Muhammad and his companions, and about anything he might know. The sheikh said: I will not tell you till you tell me from where you are? The Messenger of Allah ﷺ said, if you tell us, we will tell you. He said, is this for that? He said: yes. The Sheikh said: ... I was told that Quraysh had left on such and such day. If one who informed me said the truth, then they would be in such and such place. When the sheikh finished his news, he asked: where are

you from? The Messenger of Allah ﷺ said: from water, and turned away from him. He said: the sheikh was asking: from water or from the water of Iraq? Then the Messenger of Allah ﷺ returned to his companions. When night fell, he sent 'Ali Ibn Abi Talib, Zubayr Ibn Al-'Awwam and Sa'd Ibn Abi Waqqas together with some of his companions (may Allah be pleased with them) to the Water of Badr to seek the news from there; in other words, to spy upon Quraysh"

- Ibn Ishaq also reported that Ibn Hisham mentioned under the title: "Basbas Ibn Amr and 'Uday Ibn Abu Al-Zaghba' spy for news", till he said, "'Uday and Basbas heard that (meaning: heard that which the two maids said at the Water regarding the news of Quraysh). So, they jumped onto their two riding camels and went to the Messenger of Allah ﷺ where they informed him of that which they heard".

Though these evidences were regarding Quraysh, which was an actual belligerent, the rule applies to the potential belligerent since war is expected with them. The only difference is that spying is obligatory in the case of the actual belligerent because the war policy for defeating the enemy requires that. It is however allowed regarding the potential belligerent because war is expected with them. If there is possible harm from them, in other words, it is expected they might help the belligerent or actually join them, then spying on them becomes obligatory as well.

Thus, spying on the belligerent disbelievers is allowed for Muslims and obligatory upon the State to provide. This is due to the order of the Messenger of Allah ﷺ to do so as mentioned above. It also comes under the rule:

(ما لا يتم الواجب إلا به فهو واجب)

"that, without which the obligation cannot be accomplished, is itself an obligation".

If some citizens, whether Muslims or non-Muslims, frequently visited the belligerent disbelievers, whether they were actual or potential belligerents, in our country or in their country, then these are suspects and hence it is allowed to spy on them and follow their news. This is because they frequently visit those whom it is allowed to spy on and because harm is expected from them on the State if they spied for the advantage of the disbelievers.

However, to allow spying on such citizens, the above mentioned two conditions must be verified, and so if those two conditions were not met, then it is prohibited to spy upon the citizens irrespective of whether they were Muslims or from the people of *Dhimmah* due to the explicit texts regarding that which have been mentioned previously.

The War Department takes charge of spying on the citizens that frequently visit the actual belligerent, as well as on the citizens that frequently visit the officials amongst the potential belligerent and their representatives in their own country. The Department of Internal Security takes charge of spying on the citizens that frequently visit the officials amongst the potential belligerent disbelievers and their representatives in our country.

The Foreign Affairs Department

Article 73

The Department of Foreign Affairs is in charge of all the affairs connected to the relations of the *Khilafah* state with the foreign states, whether from the political angle, or economic, industrial, agricultural and trade aspects, or postal, cable and wireless connections and so on.

The Foreign Affairs Department undertakes the responsibility of all foreign affairs, pertaining to the relation of the *Khilafah* State with foreign states, whatever these affairs and relations may be, whether they are related to the political aspect and what it entails in the forming of pacts, peace treaties, ceasefires, negotiations, appointing ambassadors, sending messengers and delegates, and establishing embassies and consulates, or relations that are related to matters that are economic, agricultural or are to do with trade, as well as postal communications or wire and wireless communications and so on. All of these matters are run by the Foreign Affairs Department, because they are concerned with the relations of the *Khilafah* State with other States.

The Messenger ﷺ used to establish foreign relations with other states and entities, as was explained in the section regarding the executive assistant. He ﷺ sent ‘Uthman b. ‘Affan (ra) to negotiate with Quraysh just as he ﷺ negotiated with the delegates of Quraysh. He ﷺ sent delegates to the kings and he ﷺ received the delegates of kings and *Amirs* and concluded pacts and peace treaties. Similarly, his ﷺ *Khulafaa*’ used to establish political relations with other states and entities. They would appoint people to carry these actions out on their behalf, on the basis that whatever action a person can perform by himself, he can delegate it to some other person to carry it out on his behalf.

Due to the complications of international life, and the vastness and variety of international political relations, we adopt that the *Khalifah* should delegate an institution within the state specific to the international relations where the *Khalifah* follows its work as he does with any other ruling and administrative institutions in the state, whether directly or through the executive assistant, in accordance with the related *Shari'ah* rules.

The Department of Industry

Article 74

The Department of Industry is in charge of all the affairs connected to industry, whether heavy industry such as the manufacturing of engines, machines, vehicles, materials and electrical equipment, or light industry. Similarly, whether the factories are of the public property type or they are included in the private property and have a relationship to the military industry. All types of factories must be established upon the basis of military policy.

The department of industry is the department that takes charge of all the affairs related to industry, whether they pertain to heavy industry like the manufacturing of motors, engines, vehicles, materials, and electrical equipment, or light industry; and irrespective of whether the factories were public or private property which have a relationship with the military industries. The factories in all sectors must be based on the war policy. This is because *Jihad* and fighting require an army, and in order to fight this army requires weapons. In order that these weapons be of the highest level and fully available, it is necessary to have an industry within the State, particularly the military industry, due to its strong relationship with *Jihad*.

In order that the State becomes independent of other countries and does not become influenced by any of them it should manufacture and develop its own weapons by itself. This makes it independent and in continuous possession of the most advanced and strongest weaponry, regardless of the level of development and advancement of weapons. It would also have at its disposal all that it needs of weapons to intimidate both the evident and potential enemies, as Allah (swt) says:

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ وَمِنْ رِبَاطِ الْخَيْلِ تُرْهِبُونَ بِهِ

عَدُوَّ اللَّهِ وَعَدُوَّكُمْ وَآخَرِينَ مِنْ دُونِهِمْ لَا تَعْلَمُونَهُمُ اللَّهُ يَعْلَمُهُمْ﴾

“And prepare against them whatever you are able of power and of steeds of war by which you may terrify the enemy of Allah and your enemy and others besides them whom you do not know [but] whom Allah.” (TMQ 8:60)

As such the State would have its own will, produce the weapons that it needs and develop them continuously so that it owns the strongest and most developed weapons in order to intimidate all the evident and potential enemies. Therefore, it is a duty upon the State to manufacture weapons by itself and it is not allowed to depend upon other states, because this allows other states to control it, its will, its weapons and its fighting.

It is quite clear in the world today that the states which sell weapons to other states do not usually sell every weapon, particularly the most developed weapons. They do not even sell weapons except with certain conditions that cover their utilisation. They will not sell them except in quantities that they, rather than the purchasing countries, decide. This gives the state which sells arms, authority and influence over the state which buys the arms, enabling it to enforce its own will upon the purchasing state, particularly if it was involved in a war. In that case it would need more arms, spare parts and ammunition, which would increase its dependence on the state which exports its arms and increase its submission to another state's demands. This allows the state which exports arms to control it and its will, especially in times of war and in times of great need for arms and spare parts. Hence such a state would make itself, its will and its entity hostage to the state that exports arms to it.

Therefore, for all these reasons, the State has to independently manufacture its own arms and everything it

requires for its war machine and spare parts. This can't be achieved unless the State possesses heavy industry and started to build factories which produce heavy industry, both military and non-military alike. Thus it is necessary that the State have factories for producing all types of atomic weapons, rockets, satellites, airplanes, tanks, mortars, naval ships, armoured vehicles and all types of heavy and light weapons. It is necessary that it have factories which produce machines, motors, materials, and electronics, and factories which have a relation with public property and light factories which have relation with the military or war industries. All this is required by the duty of preparation which is obliged upon the Muslims by the saying of Allah (swt):

﴿وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ﴾

“And prepare against them whatever you are able of power.” (TMQ 8:60).

Since the Islamic State conveys the message of Islam by *Da'wah* and *Jihad*, it should be a state which should be continually ready to carry out *Jihad*. This requires the existence of heavy and light industry built upon the basis of its war policy. Thus in case it wanted at any time to transform these factories for military purposes, it would easily do so at any time. Therefore, all the industry in the *Khilafah* State should be based on the war policy, and all the factories, which produce the light and heavy industries, should be based on this policy, so that it becomes easy to transform their production to military production at any time the State requires.

The Judiciary

Article 75

The Judiciary is the pronouncement of the rule that becomes binding. It settles the disputes between the people and prevents that which harms the community's rights, or it eliminates the disputes arising between people and members of the ruling system – both rulers and civil servants – from the Head of State downwards.

The origin of the judiciary and its legitimacy is the Book and the *Sunnah*. As for the Book, the words of Allah (swt)

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ﴾

“And judge, [O Muhammad], between them by what Allah has revealed.” (TMQ 5:45), and His (swt) words

﴿وَإِذَا دُعُوا إِلَى اللَّهِ وَرَسُولِهِ لِيَحْكُمَ بَيْنَهُمْ﴾

“And when they are called to [the words of] Allah and His Messenger to judge between them.” (TMQ 24:48). As for the *Sunnah*, the Messenger ﷺ used to undertake the judiciary by himself and judge between the people, such as what Bukhari narrated from 'Aisha (ra), the wife of the Prophet ﷺ, that she said

(كَانَ عَثْبَةُ بْنُ أَبِي وَقَّاصٍ عَهْدَ إِلَى أَخِيهِ سَعْدِ بْنِ أَبِي وَقَّاصٍ أَنَّ ابْنَ وَلِيدَةَ زَمْعَةَ مَيِّ فَاقْبَضَهُ، قَالَتْ: فَلَمَّا كَانَ عَامُ الْفَتْحِ أَخَذَهُ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَقَالَ: ابْنُ أَخِي قَدْ عَهْدَ إِلَيَّ فِيهِ، فَقَامَ عَبْدُ بْنُ زَمْعَةَ فَقَالَ: أَخِي وَابْنُ وَلِيدَةَ أَبِي وُلِدَ عَلَى فِرَاشِهِ، فَتَسَاوَقَا إِلَى النَّبِيِّ ﷺ فَقَالَ سَعْدُ: يَا رَسُولَ اللَّهِ، ابْنُ أَخِي كَانَ قَدْ عَهْدَ إِلَيَّ فِيهِ، فَقَالَ عَبْدُ بْنُ زَمْعَةَ:

أَخِي وَابْنُ وَلِيدَةٍ أَبِي وُلِدَ عَلَى فِرَاشِهِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «هُوَ لَكَ يَا عَبْدُ بَنِ زَمْعَةَ»،
ثُمَّ قَالَ النَّبِيُّ ﷺ: «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ»

“Utba bin Abu Waqqas took a firm promise from his brother Sa`d bin Abu Waqqas to take the son of the slave-girl of Zam`a into his custody as he was his (i.e. `Utba's) son. In the year of the Conquest (of Mecca) Sa`d bin Abu Waqqas took him, and said that he was his brother's son, and his brother took a promise from him to that effect. 'Abu bin Zam`a got up and said, "He is my brother and the son of the slave-girl of my father and was born on my father's bed." Then they both went to the Prophet ﷺ Sa`d said, "O Allah's Prophet ﷺ! He is the son of my brother and he has taken a promise from me that I will take him." 'Abu bin Zam`a said, "(He is) my brother and the son of my father's slave-girl and was born on my father's bed." Allah's Prophet ﷺ said, "The boy is for you. O 'Abu bin Zam`a." Then the Prophet said, "The son is for the bed (i.e. the man on whose bed he was born) and stones for the one who has done illegal sexual intercourse”. And the Messenger of Allah ﷺ used to appoint judges; he appointed ‘Ali (ra) as the judge over Yemen and he ﷺ gave him instructions about how to judge by saying:

«إِذَا تَقَاضَى إِلَيْكَ رَجُلَانِ، فَلَا تَقْضِ لِلأَوَّلِ حَتَّى تَسْمَعَ كَلَامَ الْآخِرِ، فَسَوْفَ
تَدْرِي كَيْفَ تَقْضِي»

“Do not judge for the first until you have heard the statement of the other. Soon you will know how to judge.” reported by Al-Tirmidhi, and Ahmad, and in the report of Ahmad with the wording

«إِذَا جَلَسَ إِلَيْكَ الْخَصْمَانِ، فَلَا تَكَلِّمْ حَتَّى تَسْمَعَ مِنَ الْآخِرِ كَمَا سَمِعْتَ
مِنَ الْأَوَّلِ»

“When two litigants sit in front of you, do not decide (and speak) until you listen from the second what you have heard from the first.”

The method of adjudication carried out by the Messenger ﷺ can be deduced from the narration of 'Aisha (ra) that Sa'ad and 'Abd Bin Zuma'ah disputed over the son of Zuma'ah, so each one of them claimed that he was his. The Messenger of Allah ﷺ informed them of the *Shari'ah* rule that the son of Sawda bint Zuma'ah was the brother of 'Abd Bin Zuma'ah, and that the child belongs to the one on whose bed it is born. Therefore, his ﷺ judgement was information about the *Shari'ah* rule which he then enforced upon them, and so Abd Bin Zuma'ah took the child. This is the proof for Article 75, which gives the definition of the judiciary, and this definition serves as a description of the reality. However, since it is a *Shari'ah* reality, and since the *Shari'ah* definition is in fact a *Shari'ah* rule, it ,therefore, requires evidence from which it is to be deduced, and this narration serves as an evidence for the definition of the judiciary found in this article.

Some people defined the judiciary as being the “settling of disputes between people”, and this definition is deficient from one angle, and from another angle it is not a description of the reality of the judiciary as reflected in the Messenger of Allah's ﷺ actions and sayings. Rather, this definition is merely an explanation of what may or may not occur from the judiciary. The judge may rule upon the case and not settle the dispute between the parties. Therefore, the comprehensive and exclusive definition would be the one mentioned in this article and it has been deduced from the narrations.

Also, this definition includes the judgement between people, and this is mentioned in the narration of 'Aisha (ra). It also includes the Hisbah (public order) which is: *“Conveying the Shari'ah rule for the purpose of enforcing it regarding that which causes harm to the rights of the community”*. This is what has been narrated in the narration of the heap of food. It is narrated in *Sahih Muslim* on the authority of Abu Huraira that

«أَنَّ رَسُولَ اللَّهِ ﷺ مَرَّ عَلَى صُبْرَةٍ طَعَامٍ فَأَدْخَلَ يَدَهُ فِيهَا فَتَأَلَّتْ أَصَابِعُهُ بِلَالًا، فَقَالَ: مَا هَذَا يَا صَاحِبَ الطَّعَامِ؟ قَالَ: أَصَابَتْهُ السَّمَاءُ يَا رَسُولَ اللَّهِ، قَالَ: أَفَلَا جَعَلْتَهُ فَوْقَ الطَّعَامِ كَيْ يَرَاهُ النَّاسُ، مَنْ غَشَّ فَلَيْسَ مِنِّي»

“The Messenger of Allah ﷺ happened to pass by a heap of eatables. He thrust his hand in that (heap) and his fingers were moistened. He said to the owner: What is this? He replied: Messenger of Allah, these have been drenched by rainfall. He ﷺ remarked: Why did you not place this (the drenched part of the heap) over other eatables so that people could see it? He who deceives is not of me (is not my follower).” and in the report in Ahmad and Ibn Maja and Al-Darimi

«مَنْ غَشَّنَا فَلَيْسَ مِنَّا»

“He who deceives us is not from us”.

It also includes the *Madhalim* (injustices), because they are part of the judiciary and not part of the ruling, since they are complaints against the ruler. The *Madhalim* is defined as “Conveying the Shari’ah rule for the purpose of enforcing it regarding the disputes which occur between the people and the Khalifah, his governors or civil servants, and regarding what occurs between the Muslims due to differences in the meaning a text from the Shari’ah texts used in order to judge by them and to rule according to them.” The *Madhalim* were mentioned in the narration of the Messenger of Allah ﷺ regarding the fixing of prices where he said:

«وَإِنِّي لَأَرْجُو أَنْ أَلْقَى اللَّهَ وَلَا يَطْلُبُنِي أَحَدٌ بِمَظْلَمَةٍ ظَلَمْتُهَا إِنِّي فِي دَمٍ وَلَا

مَالٍ»

“And I am hopeful that I will meet Allah and none of you are seeking (recompense from) me for an injustice (I have inflicted) involving blood or wealth.” reported by Ahmad from Anas Bin Malik, and in his ﷺ words

«مَنْ أَخَذْتُ لَهُ مَالاً فَهَذَا مَالِي فَلْيَأْخُذْ مِنْهُ، وَمَنْ جَلَدْتُ لَهُ ظَهْرًا فَهَذَا ظَهْرِي فَلْيَقْتَصْ مِنْهُ»

“Whoever I took property from, here is my property; let him take from it, and whosever back I whipped, here is my back to take recompense from.” reported by Abu Ya’la from Al-Fadl Bin ‘Abbas. Al-Haythami said that ‘Ata’ b. Muslim, who is in the chain of Abu Ya’la, has been considered trustworthy by Ibn Hibban and others, whereas others have weakened him, and the rest of the narrators are trustworthy. This indicates that the issue of the ruler, governor or civil servant is raised to the judge of the Court of Injustices (*Madhalim*) in any claim of an injustice, and the judge of the Court of Injustices (*Madhalim*) conveys the *Shari’ah* rule which would be binding.

Based upon this, the definition would encompass the three types of judiciary reflected in the narrations and actions of the Messenger of Allah ﷺ. These are the settling of disputes between people, preventing whatever may harm the rights of the community and the settling of the disputes between the subjects and the rulers, or between the subjects and the civil servants in their work.

Article 76

The *Khalifah* appoints a supreme judge to the judiciary from the male, adult, free, Muslim, sane, just people who know jurisprudence, and if he was given the power to appoint and remove the *Madhalim* judge, and had the power of judgement in the *Madhalim*, then he would have to be a *Mujtahid*. He would have the power to appoint judges, discipline them, and remove them as part of the administrative systems. As for the remainder of the civil servants of the courts, they are connected to the Department Manager who is responsible for the courts’ affairs.

The origin is that the *Khalifah* can appoint governors to a specific governorship upon one of the issues in all the parts of the State, just as he can appoint a governor to a specific governorship upon one of the issues in a specific location, similar to how he can appoint a governor to a general governorship in a specific location. So, just as the *Khalifah* can empower a leader for *Jihad*, and one for *Hajj*, and one over the land taxes, he can also empower a leader for the judiciary. He can give that leader the right to appoint judges, remove them and discipline them, in the same way that he can give the leader of *Jihad* the right to appoint Majors and Corporals over the soldiers, and discipline them and remove them. Due to this it is permitted for the *Khalifah* to appoint a Supreme Judge, or in other words, a leader over the judiciary. This Supreme Judge, or leader of the judiciary, would be a ruler and not a civil servant, since he is a governor who has undertaken a governorship - in other words, ruling - just like any leader or governor over any of the issues. However, he is not considered to be an assistant for the *Khalifah* in the judiciary because he was given a specific appointment, in other words, in all the issues of judiciary, and so his appointment is in the judiciary and does not go beyond that. As for the assistant, he is given a general appointment in all the issues, so the *Khalifah* can seek his help in all issues, unlike the Supreme Judge who can assist in the judiciary alone.

It is not confirmed that the Messenger ﷺ appointed a Supreme Judge, in the same way that it is not confirmed that any of the righteous guided *Khulafaa'* appointed a Supreme Judge. There is nothing that indicates that the judiciary in the territories used to have deputies who would carry out the judiciary in the towns and villages, neither in the time of the righteous guided *Khulafaa'*, and not even by the time of the Ummayyads. The first appointment of a supreme judge by the *Khalifah* was at the time of Harun Al-Rashid, and the first judge to be given this description was the judge Abu Yusuf, the famous *Mujtahid*, who

was a companion of Abu Hanifah. Accordingly, it is permitted for the *Khalifah* to appoint a judge who is given the power to appoint and remove judges; so it is from the permitted actions.

Based upon this it is permitted for the *Khalifah* to appoint a “Supreme Judge”. However, his pre-conditions are the same of those of the judge and the ruler, since he is a judge and a ruler since he has been given the power to appoint judges and to adjudicate in court cases. In other words, it is a condition for the Supreme Judge to be male, adult, free, Muslim, sane, just, and from the people who know the jurisprudence, since the condition of capability in this case means that he should know jurisprudence since his work is responsibility over the judiciary in addition to his powers of judging. The Messenger ﷺ has blamed whoever judges with ignorance and informed us that they would be from the people of the hellfire; he ﷺ said

«وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ»

“And a man who passess judgement on the people in ignorance will be in hellfire” (reported by the authors of the *Sunan* and Al-Hakim who authenticated it from Buraydah). From this evidence it is has been made a condition that the judge should be from the people who know the jurisprudence. The Supreme Judge should be a *Mujtahid* if he was given the power to appoint and remove the *Madhalim* judge, and the powers to judge in the *Madhalim*, since such a judgement requires *Ijtihad* as is explained in article 78.

As for what is mentioned in the article about the appointment of civil servants for the courts, these people are employees and the evidence for the permission of their appointment is the evidence for the hiring of an employee.

Article 77

The Judges are of three types: One is the Judge (*Qadi*), and he undertakes settling the disputes between people over transactions and penal codes. The second is the *Muhtasib*, who undertakes the settling of any breach of law that may harm the rights of the community. The third is the judge of the Court of Injustices (*Madhalim*), who undertakes the settling of disputes between the people and the State.

This article explains the types of judiciary. The evidence about the judge that settles disputes between people is derived from the actions of the Messenger of Allah ﷺ, and from his appointment of Mu'adh b. Jabal (ra) over an area of Yemen.

As for the evidence for the judiciary regarding the settling of disputes which endanger the rights of the community, where the judge is known as the *Muhtasib*, this is confirmed by the action and words of the Messenger of Allah ﷺ, for he said

«لَيْسَ مِنَّا مَنْ غَشَّ»

“He who decives has nothing to do with us” (reported by Ahmad and Ibn Maja from Abu Hurayrah). He used to confront the cheaters and punish them. Qays b. Abi Gharzah Al-Kanani reported

كنا نبتاع الأوساق في المدينة ونسمي أنفسنا السماسرة، فخرج علينا رسول الله ﷺ فسمانا باسم أحسن من اسمنا قال ﷺ: «يَا مَعْشَرَ التَّجَارِ، إِنَّ الْبَيْعَ يَحْضُرُهُ اللَّغْوُ وَالْحَلْفُ، فَشُوبُوهُ بِالصَّدَقَةِ»

“We used to trade in the market of Al-Madinah and we used to call ourselves as-Samasirah (brokers), so the Messenger of Allah ﷺ came out to us and gave us a better name. He ﷺ said: O company of merchants, unprofitable speech and swearing takes place in business dealings, so mix it with

Sadaqah (alms)” (reported by the authors of the *Sunan* and Al-Hakim who authenticated it, and Al-Tirmidhi said it is *Hasan Sahih*). And it is narrated that Al-Bara’ b. ‘Azib and Zayd b. Arqam were partners, so they both bought some silver with money on the spot and by credit. This news reached the Messenger of Allah ﷺ, so he ﷺ ordered

«أَنَّ مَا كَانَ بِنَقْدٍ فَأَجِزُوهُ، وَمَا كَانَ بِنَسِيئَةٍ فَرُدُّوهُ»

“What was by (on the spot) money is permitted, and what was on credit must be rejected”

(reported by Ahmad from Al-Minhal). All of this is the judiciary of Hisbah.

Calling the judiciary that settles the disputes that may harm the right of the community as Hisbah is in fact a technical term referring to a specific task carried out in the Islamic State, which is the monitoring of the traders and skilled workers in order to prevent them from cheating in their trade, work, or products, forcing them to use measurements and scales and preventing anything else that may harm the community. These are the very types of actions that the Messenger of Allah ﷺ demonstrated, ordered to be observed, and undertook in settling their issues, as is clear from the narration Al-Bara’ b. ‘Azib, where he ﷺ prevented both parties from selling silver by credit. Therefore, the evidence about the Hisbah is from the *Sunnah*. In the same manner, these evidences include that the Messenger of Allah ﷺ appointed Sa‘id b. Al-‘As over the Makkan market after it had been conquered as is mentioned in *Al-Tabaqat* of Ibn Sa’d, and in *Al-Isti‘ab* of Ibn Abdul Birr. And Umar Bin Al-Khattab (ra) appointed Al-Shifa, a woman from his clan, as a market judge (inspector), in other words, a judge of Hisbah, as he also appointed ‘Abd Allah b. Utbah over the market of Madinah, as reported by Malik in *Al-Muwatta* and Al-Shafi’i in his *Musnad*. He personally used to also deal with the judiciary of the Hisbah, and would go around the markets just like the Messenger ﷺ used to do. The *Khulafaa’* went on carrying out the Hisbah until when Al-Mahdi came he

established a special department for the Hisbah, making it a part of the institutions of the judiciary. At the time of Al-Rashid, the *Muhtasib* (judge of Hisbah) would go around the markets, checking the weights and measures for any cheating, and to look into the traders' transactions.

The proof for the judiciary that is called the Judge of the Court of Injustices (*Madhalim*) is the action of the Messenger having allowed him to retaliate from the Messenger ﷺ himself. Al-Bayhaqi narrated in *Alsunan Alkubra* through Abi Saeed Alkhudari who said:

بينما رسول الله ﷺ يقسم شيئاً أقبل رجل فأكبَّ عليه ﷺ فطعنه رسول الله ﷺ بعُرجون "أي عِذْق من نخل" كان معه ﷺ فجرح الرجل، فقال له الرسول ﷺ «تعال فاستَقِدْ»، فقال بل عفوت يا رسول الله.

"While the Messenger of Allah ﷺ was dividing something, a man approached him and tried to hastily take a portion from the Prophet ﷺ. He ﷺ stabbed him with a date tree stalk which was with him, thereby wounding the man. The Messenger said to the man: "Come and retaliate." The man replied: I have forgiven O Messenger of Allah." This is a case between the head of the state (the Messenger of Allah ﷺ) and one of the citizens, and additionally he ﷺ said

«فَمَنْ كُنْتُ أَصَبْتُ مِنْ عَرَضِهِ، أَوْ مِنْ شَعْرِهِ، أَوْ مِنْ بَشَرِهِ، أَوْ مِنْ مَالِهِ شَيْئاً، هَذَا عَرَضُ مُحَمَّدٍ وَشَعْرُهُ، وَبَشَرُهُ، وَمَالُهُ فَلْيَقُمْ فَلْيَقْتَصْ»

"Whoever I took property from, here is my property; let him take from it, and whosever back I whipped, here is my back; take recompense from it." reported by Abu Ya'la from Al-Fadl Bin 'Abbas. Al-Haythami said that 'Ata b. Muslim who is in the chain of Abu Ya'la has been considered trustworthy by Ibn Hibban and others, whereas others have weakened him, and the rest of the narrators are trustworthy. In a narration by Tabarani in

al-Mu'jam Al-awst by al-Fadhl bin al-Abbas narrated that the Prophet ﷺ said,

«فَمَنْ كُنْتُ جَلَدْتُ لَهُ ظَهراً فِهَذَا ظَهري فَلْيَسْتَقِدْ مِنْهُ، وَمَنْ كُنْتُ شَتَمْتُ لَهُ عَرَضاً فِهَذَا عَرَضِي فَلْيَسْتَقِدْ مِنْهُ، وَمَنْ كُنْتُ أَخَذْتُ لَهُ مَالاً، فِهَذَا مَالِي فَلْيَسْتَقِدْ مِنْهُ»

“Whoever I had whipped his back here is my back, let him retaliate! Whoever I had cursed his honor, here is my honor let him curse it! Whoever I had taken some money from him here is my money, let him take from it.” This is nothing other than the judiciary of the injustices (*Madhalim*), because it is encompassed by the definition of the judiciary of injustices (*Madhalim*), which is the investigation into what occurred between the people and the *Khalifah*. Therefore, the evidence for the judiciary of injustices (*Madhalim*) is the actions and words of the Messenger ﷺ. However, he ﷺ did not make a judge specific to the injustices (*Madhalim*) alone for all the areas of the State, and the *Khulafaa*’ after him proceeded in the same manner, in that they used to deal with the injustices (*Madhalim*) as occurred with ‘Ali Bin Abi Talib (ra) – but he did not make it during a specific time or with a particular style, rather the injustice (*Madhlamah*) would be looked into as it occurred, and so it was part of the overall actions. The situation remained the same until the days of ‘Abd Al-Malik b. Marwan, who was the first *Khalifah* to deal with the injustices (*Madhalim*) separately at a specific time with a particular style, so he used to designate a specific day, and would look into the injustices, and subsequently if anything was difficult for him he would pass it to his judge who would rule upon it. After that, built upon this system, the *Khalifah* would appoint a delegate who would look into the injustices raised by the people, and the Court of Injustices (*Madhalim*) became a specific apparatus, and used to be called “*Dar Al-‘Adl*” (the House of Justice). This is permitted from the angle of appointing a judge who is specific for it, since it is permitted for the *Khalifah* to appoint someone as a delegate to undertake his work in all the mandatory powers that he has and it is permitted

from the angle of specifying a particular time, and style, since it is from the permitted issues.

Article 78

Whoever undertakes the responsibility of judgement must be a Muslim, free, adult, sane, just, a *Faqih* (person who knows jurisprudence/*Fiqh*), and aware of how to apply the rules to the events. And the person who undertakes the judiciary of injustices (*Madhalim*) in addition to the conditions mentioned, must also be male and a *Mujtahid* (capable of deriving his own *Fiqh*/conducting *Ijtihad*).

Its evidence is what was mentioned previously for the evidence for the Supreme judge, except that it is not a condition in the judge who settles the disputes and the judge of Hisbah to be male, rather it is permitted for the judge to be a woman, since it is not a position of ruling but rather a judge, in other words, they convey the *Shari'ah* rule while they are not the one who implements it. Accordingly, the narration

«لَنْ يُفْلِحَ قَوْمٌ وَلَّوْا أَمْرَهُمْ امْرَأَةً»

“Never will succeed such a nation that makes a woman their ruler.” reported by Al-Bukhari, does not apply, since it is regarding governorship which is ruling. And the reason for the narration was when the people of Persia were ruled by a woman; it is narrated from Abu Bakrah who said ***“When the Messenger of Allah ﷺ was notified that the people of Persia were ruled by the daughter of Kisra, he said:***

«لَنْ يُفْلِحَ قَوْمٌ وَلَّوْا أَمْرَهُمْ امْرَأَةً»

‘Never will succeed such a nation that makes a woman their ruler’” (reported by Al-Bukhari). So the reason for the words of the narration was a specific subject which was mentioned explicitly in the text of the narration, which is ruling, in other words, authority, and the judiciary is not an authority. Accordingly the narration is specific to ruling and does not encompass the judiciary, and that is for two reasons:

Firstly, the text which is related in a specific subject is like the text which is an answer to a question, and so it is necessary to make it specific to the issue of the question or event, and it is not correct for it to be general in all issues, because the question is reflected in the answer, and because the words are in a specific subject it is necessary to limit them to that subject, since the word of the Messenger ﷺ is connected to the question or event, and so the rule is connected to that. This is different than if the Messenger ﷺ had said that initially (not in response to an event) in which case it would be general and connected to the generality. As for if his ﷺ word is a comment upon a specific event, or an answer to a specific question, then the situation is different. If the text, in other words, the words of Allah (swt) or the words of the Messenger ﷺ, were definitely connected to a question or event, then the rule is connected to that without any doubt. This is with respect to the subject that either came from a question or event. And it is not with respect to the questioner or whom the event occurred upon, since the consideration in both of them is given to the generality of the words and not to the specific cause. And this is why there is a difference made between the cause and the subject, so the consideration is to the generality of the words and not to the specific cause, since the words are not connected to the cause, and so they remain upon their generality. This is different to the event or question, in other words, different to the subject which was included by the event, or the subject which was included by the question, since the words are definitely connected to it, and there is no doubt in that, since the narration was only for

its sake, or due to it, and due to this it is specific to the subject, and not general. Accordingly the narration

«لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ»

“Never will succeed such a nation that makes a woman their ruler” is specific to ruling, and does not encompass the judiciary.

This is the first reason. As for the second reason, the words **“makes a woman their ruler”** are from governorship, and this is the governorship of the command, and the judge is not a governor, and is not a governor for the command. Accordingly the judge does not come under this narration, so the narration does not encompass the judiciary.

This is from the angle of the indication of the narration and as for the angle of the permission for a judge to be a woman, the judge is an employee like the rest of the civil servants. And it is permitted for an employee to be male or female;

﴿فَإِنْ أَرْضَعْنَ لَكُمْ فَكَاتِبُوهُنَّ أَجُورَهُنَّ﴾

“And if they breastfeed for you, then give them their payment.” (TMQ 65:6). The judge is appointed to undertake an action according to the *Shari’ah*, or in other words, to inform the two disputing parties of the *Shari’ah* rule which would be binding upon them, and he is not appointed in order to implement the *Shari’ah*. Due to this the definition of the employee would apply to him, since it is a contract upon a service for compensation, which is opposite to the ruler since the definition would not apply to him, since he is not contracted over a specific service, rather he is given the command to execute the *Shari’ah*, and for this reason it is not permitted for a ruler to be a woman because he is a governor of a command (*Wali Al-Amr*). It is permitted for the judge to be a woman, since the judge is an employee and not a ruler.

With regards to the rest of the conditions for the judge, their proofs were discussed in the section about the conditions of the *Khalifah*. Similarly the evidence for the condition that they be a *faqih* (to know jurisprudence) is the narration

"القضاة ثلاثة"

"The judges are of three kinds" until he ﷺ said

«وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ»

"and a man who passess judgement on the people in ignorance will be in hellfire" (reported in the Sunan and authenticated by Al-Hakim from Buraydah).

This is for the judiciary of Hisbah and the judiciary that resolves the disputes between the people, where it is permitted for the judge to be a woman. As for the judge of the Court of Injustices (*Madhalim*), it is a condition that he is male, like the Supreme Judge, because his work is both ruling and judging, since he rules upon the ruler, and implements the *Shari'ah* upon him, and for that reason it is a condition that he is male along with the rest of the conditions of the judge, of which being a *Faqih* is one. However, in addition to that, it is a condition that he should be a *Mujtahid*, because as part of the injustices (*Madhalim*) he may be required to look into whether the ruler has ruled by other than that which Allah (swt) has revealed, or in other words, has ruled by a law that has no *Shari'ah* evidence, or to look into whether the evidence he used does not apply to the event. This type of injustice (*Madhlamah*) can only be dealt with by a *Mujtahid*, since if he were not a *Mujtahid*, he would be judging on something he knows little about or has no knowledge about at all, and that is forbidden and not permitted. Therefore, in addition to the conditions of the ruler and those of the judge, he should also be a *Mujtahid*.

Article 79

The *Qadi*, the *Muhtasib* and the *Madhalim* judge may be given a general appointment to pronounce judgement on all problems throughout the State, or alternatively they can be given an appointment to a particular location and to give judgement on particular types of cases.

The evidence is the actions of the Messenger ﷺ, since he appointed ‘Ali b. Abi Talib (ra) as a judge for Yemen as reported by Ahmad with an authentic chain from Ali (ra) who said

(بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى الْيَمَنِ، قَالَ: فَقُلْتُ: يَا رَسُولَ اللَّهِ، تَبْعَنِي إِلَى قَوْمٍ أَسَنَ مِنِّي وَأَنَا حَدِيثٌ لَا أُبْصِرُ الْقَضَاءَ، قَالَ: فَوَضَعَ يَدَهُ عَلَى صَدْرِي وَقَالَ: «اللَّهُمَّ ثَبِّتْ لِسَانَهُ وَاهْدِ قَلْبَهُ، يَا عَلِيُّ، إِذَا جَلَسَ إِلَيْكَ الْخَصْمَانِ فَلَا تَقْضِ بَيْنَهُمَا حَتَّى تَسْمَعَ مِنَ الْآخِرِ كَمَا سَمِعْتَ مِنَ الْأَوَّلِ، فَإِنَّكَ إِذَا فَعَلْتَ ذَلِكَ تَبَيَّنَ لَكَ الْقَضَاءُ»، قَالَ: فَمَا اخْتَلَفَ عَلَيَّ قَضَاءٌ بَعْدُ، أَوْ مَا أَشْكَلَ عَلَيَّ قَضَاءٌ بَعْدُ)

“The Messenger of Allah ﷺ sent me to Yemen, and I said: You have sent me to people of experience, and I am young! And I don’t know how to judge. He ﷺ struck me on the chest and said: ‘O Allah, guide his heart and make his tongue steadfast. He ﷺ said: When the two litigants sit in front of you, do not decide till you hear what the other has to say. If you do that, judgement will become clear to you. Ali said: after that I never doubted in passing judgment between two people.”

He ﷺ appointed Mu’adh as a judge over a part of Yemen, Abu Umar b. ‘Abd Al-Barr mentioned in *Al-Isti’ab*

(وقال ابن إسحق: أَخَى رَسُولُ اللَّهِ ﷺ بَيْنَ مُعَاذِ بْنِ جَبَلٍ وَبَيْنَ جَعْفَرِ بْنِ أَبِي طَالِبٍ، شَهِدَ الْعَقَبَةَ وَبَدْرًا وَالْمَشَاهِدَ كُلَّهَا، وَبَعَثَهُ رَسُولُ اللَّهِ ﷺ قَاضِيًا إِلَى الْجَنْدِ

مَنْ يَمَنُ، يُعَلِّمُ النَّاسَ الْقُرْآنَ وَشَرَائِعَ الْإِسْلَامِ، وَيَقْضِي بَيْنَهُمْ. وَجَعَلَ إِلَيْهِ قَبْضَ الصَّدَقَاتِ مِنَ الْعُمَّالِ ...)

“Ibn Ishaq said: The Messenger of Allah ﷺ made a brotherhood between Mu’adh Bin Jabal and Ja’far b. Abi Talib; they witnessed Al-Aqaba and Badr and all of the events, and the Messenger of Allah ﷺ sent him to Al-Janad in Yemen to teach the people Quran and the Shari’ah of Islam, and to judge between them, and to collect the Sadaqah from the workers...”

He ﷺ appointed Amr b. Al-‘As to give judgement in one particular case. Ibn Qudamah mentioned in *Al-mughni* saying

(وَعَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: جَاءَ خَصْمَانِ يَخْتَصِمَانِ إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَ: «أَفْضِ بَيْنَهُمَا» قُلْتُ: أَنْتَ أَوْلَى بِذَلِكَ. قَالَ: «وَأِنْ كَانَ». قُلْتُ: عَلَامَ أَقْضِي؟ قَالَ: «أَفْضِ فَإِنْ أَصَبْتَ فَلَكَ عَشْرَةُ أَجُورٍ، وَإِنْ أَخْطَأْتَ فَلَكَ أَجْرٌ وَاحِدٌ»)

“From ‘Uqbah b. Amir who said: Two litigants brought their dispute to the Messenger of Allah, and so he ﷺ said – Judge between them. I said: You have supremacy over me to do that. He ﷺ said: Even if. I said: On what should I judge? He said: Judge, and if you are right, you will have ten rewards and if you make a mistake, you will get one reward”. Ibn Qudamah said, and Ahmad reported the same narration with a chain whose men were all authentic to ‘Uqbah b. Amir from the Prophet ﷺ, except that he ﷺ said

«فَإِنْ اجْتَهَدْتَ فَأَصَبْتَ الْقَضَاءَ فَلَكَ عَشْرَةُ أَجُورٍ، وَإِنْ اجْتَهَدْتَ فَأَخْطَأْتَ فَلَكَ أَجْرٌ وَاحِدٌ»

“And if you do Ijtihad and you are right, you will have ten rewards, and if you do Ijtihad and you have erred, you will get one reward”.

Article 80

The courts should be comprised of only one judge who has the authority to pronounce judgement. One or more judges are permitted to accompany him, however they do not have the authority of judgement but rather the authority of consulting and giving their opinion, and their opinion is not considered binding.

Its proof is that the Messenger ﷺ did not appoint two judges to one case, but rather he would appoint a single judge for the single case, which indicates the impermissibility of having a multiplicity of judges in a single case. Additionally, the judiciary is the informing of the *Shari'ah* rule which is then binding, and the *Shari'ah* rule for the single Muslim is not multiple, since it is the rule of Allah (swt), and the rule of Allah (swt) is one. It is correct that there could be multiple understandings of it, but concerning the Muslim from the angle of action according to it, the *Shari'ah* rule is singular and is never multiple. So anything other than what he understood to be the rule of Allah (swt) concerning oneself is not the rule of Allah (swt) for him, though it is considered in his view to be a *Shari'ah* rule. Whatever he took by imitation (*Taqlid*), and then acted upon, is considered to be the rule of Allah (swt) concerning him, and anything else is not the rule of Allah (swt) for him. When the judge informs him of the rule of Allah (swt) concerning him, and this is binding upon him, it is necessary that this notification be singular since it is informing him of the rule of Allah (swt) which is binding for him, and so in reality he is acting according to the rule of Allah (swt), and the rule of Allah (swt) in the situation of practical action is not multiple, even though there may be multiple understandings. Accordingly it is not correct for there to be multiple judges, since it is impossible for the rule of Allah (swt) to be multiple.

This is with respect to the single case, or in other words, in a single courtroom. As for the country, it is permitted to have two separate courts dealing in all types of cases in one area, because the judiciary is delegated by the *Khalifah*, so it is like the proxy where plurality is permitted and thus it would be permitted to have several judges in one area. If the disputing parties could not agree on which court they should take their case to or which judge should look into their case, the choice of the plaintiff would outweigh that of the defendant and the case would be given to the judge of his choice, as he would be seeking his right and this outweighs the defendant.

Article 81

The judge can only give a verdict in a court session, and any evidence and oaths can only be considered in the court session.

Its evidence is what is narrated by ‘Abd Allah Bin Al-Zubayr who said,

«قَضَى رَسُولُ اللَّهِ ﷺ أَنَّ الْخَصْمَيْنِ يَقْعُدَانِ بَيْنَ يَدَيِ الْحَكَمِ»

“The Messenger of Allah ﷺ commanded that the two litigants sit in front of the judge (between his hands) .” (reported by Ahmad and Abu Dawud with the wording from Abu Dawud). This narration explains the form in which judgement is carried out and it is a lawful form in itself. There must be a specific form in which the judicial process be conducted, which is for the two disputing parties to sit before the ruler, and this would be the court session. Therefore, this is a condition for the validity of the judicial process i.e. it is imperative that there be a specific assembly where the judgement is to be conducted for it to be a valid judgement and this would be for the two disputing parties to

sit before a ruler. This is supported by the narration of Ali (ra) when the Messenger of Allah ﷺ said to him:

«يَا عَلِيُّ، إِذَا جَلَسَ إِلَيْكَ الْخَصْمَانِ فَلَا تَقْضِ بَيْنَهُمَا حَتَّى تَسْمَعَ مِنَ الْآخِرِ
كَمَا سَمِعْتَ مِنَ الْأَوَّلِ»

“O ‘Ali, When two litigants sit in front of you, do not decide till you hear what the other has to say as you heard what the first had to say.” (reported by Ahmad), which also explains the specific form with his ﷺ words

إِذَا جَلَسَ إِلَيْكَ الْخَصْمَانِ

“when two litigants sit in front of you”. So the court session is a condition for the validity of the judgement, and in the same manner it is a condition for the consideration of the oaths, due to the words of the Messenger ﷺ

«وَلَكِنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ»

“and the oath is upon the one who was accused (defendant)” (agreed upon from Ibn Abbas), and he would not have this attribute, the attribute of being accused, except in a court session. In the same manner, there would be no consideration for evidence unless given in a court session, due to the words of the Messenger ﷺ

«الْبَيِّنَةُ عَلَى الْمُدَّعِي»

“The onus of proof is upon the claimant (plaintiff)” (reported by Al-Bayhaqi with an authentic chain as Ibn Hajar said), and this attribute would not be given except in the court session.

Article 82

It is permissible to vary the grades of courts in respect to the type of cases. Some judges may thus be assigned to certain cases of particular grades and other courts to be authorised to judge the other cases.

Its evidence is that the judiciary is delegated by the *Khalifah* and it is just like proxy, with no difference between them. The judiciary is one form of proxy, and it is permitted for proxy to be general or specific. Therefore, it would be permitted to appoint a judge to deal in specific cases only, and prohibited from dealing with any other ones. It is permitted to appoint another judge to look into all sorts of cases including those mentioned, even in the same location, or to look into cases other than those mentioned. Therefore, it is permitted to have various levels of courts, and Muslims had this in the first era. Al-Mawardi wrote in his book entitled *Al-Ahkam Al-Sultaniyyah*: “Abu ‘Abd Allah Al-Zubayr said: ‘The leaders here in Basra used to appoint a judge at the central mosque, and they called him the judge of the mosque. He used to judge in disputes involving amounts below twenty Dinars and two hundred Dirhams, and he used to impose maintenance (*Nafaqah*). He would not exceed his boundaries and nor the duties entrusted to him’”. The Messenger of Allah ﷺ delegated others on his behalf in the judiciary in a single case such as when he delegated Amr b. Al-‘As, and he ﷺ delegated others on his behalf in the judiciary in all of the cases in a particular province as he did when he delegated ‘Ali b. Abi Talib (ra) over the judiciary in Yemen. This indicates that it is permitted to have a specific and general judiciary.

Article 83

There is no court of appeal, and no court of cassation, so the judiciary, as far as the method by which the cases are treated, is of a single level. If the judge pronounced a verdict, it would become binding, and it cannot ever be annulled by the verdict

of another judge unless he ruled by other than Islam, or contradicted a definite text from the Quran, *Sunnah* or *Ijmaa'* of the companions, or it became clear that he gave a verdict that contradicted the reality of the situation.

This article explains that the ruling of a judge cannot be annulled, neither by himself nor by any other judge. The evidence that the ruling of the judge is not annulled is that the companions had an *Ijma'* upon it. Abu Bakr (ra) ruled in the issues according to his *Ijtihad*, and Umar (ra) differed with him and did not annul his rulings, and Ali (ra) differed with Umar (ra) in his *Ijtihad* and did not annul his rulings, and Ali (ra) disagreed with both Abu Bakr (ra) and Umar (ra) and did not annul their rulings. The people of Najran came to 'Ali (ra) and said "O leader of the believers, the judgement is in your hands and your pardon is with your own tongue". He said: "Woe to you, Umar was rightly guided and I will not reverse a judgement pronounced by Umar." It has been reported that Umar (ra) judged that in the shared inheritance, the rights of brothers from the father's side are abrogated. He then ordered that they have a share, and then said "That sentence applies to that case and this sentence applies to this one", and he executed both sentences despite the contradiction. This was mentioned by Ibn Qudamah in *Al-Mughni* and Al-Bayhaqi from Al-Hakam Bin Mas'ud Al-Thaqafi. He also judged differently in relation to the grandfather and he never reversed any of the earlier sentences, as is mentioned by Al-Bayhaqi in *Al-Sunan Al-Kubra*.

As for what has been reported about Shurayh (the judge) having judged in the case of two paternal cousins, where one of them was one of the mother's brothers, that the estate should go to the brother, this was referred to Ali (ra) who said "Bring him to me". When he came he said to him "Where in the Book of Allah did you find this?" He said Allah (swt) says,

﴿وَأُولُوا الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ﴾

“But those of [blood] relationship are more entitled [to inheritance] in the decree of Allah.” (TMQ 8:75), so ‘Ali (ra) said to him “*Allah also says*

﴿وَلِإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةً وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ

مِنْهُمَا السُّدُسُ﴾

“And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth.” (TMQ 4:12), and he then reversed his ruling as is mentioned in some narration. Ibn Qudamah replies to this in *Al-Mughni* in the chapter of the judiciary saying “It is not confirmed that Ali reversed his ruling, but if it was confirmed it may be that Ali was certain that he contradicted the text of the Quran in the verse which he mentioned and ,therefore, he voided his ruling”. It is confirmed that the companions used to rule in issues according to their *Ijtihad* and that the *Khalifah* used to differ with them in their *Ijtihad* in the eras of Abu Bakr (ra), Umar (ra) and ‘Ali (ra), and none of them would annul the rulings of the other. And it is confirmed that Umar (ra) ruled by opposite and different rulings in single issues, and would execute all of the rulings and not reverse the first ruling by the second one even though they were contradictory, and it is confirmed that he said regarding this “That sentence applies to that case and this sentence applies to this one” (mentioned by Ibn Qudamah in *Al-Mughni* and Al-Bayhaqi from Al-Hakam b. Mas’ud Al-Thaqafi). This indicates the irreversibility of the judge’s rulings. Ibn Qudamah said in *Al-Mughni*: “As for if his *Ijtihad* changed without contradicting a text or an *Ijma’*, or if his *Ijtihad* differed from the *Ijtihad* of those before him, he should not reverse it just because it is different, for the companions have an *Ijma’* on that”.

As for what has been narrated from the message of Umar Bin Al-Khattab (ra) to Abu Musa from his words *“Do not allow a judgement you passed yesterday, which you reviewed and gained the right guidance, to prevent you from returning to the truth, for the truth is Qadim (old), and to return to the truth is better than to continue with the falsehood”* as reported by Al-Bayhaqi in *Al-Sunan* from Sa‘id Bin Abi Burdah, and Khatib Al-Baghdadi in *Al-Tarikh* from Sa‘id Bin Abihi, and Al-Daraqutni from Abu ‘l-Malih Al-Hathali, what was intended in the letter was if you passed a judgement yesterday and then realised that it was wrong, do not let this stop you from changing it and passing a different judgement in another case. It does not mean that you should annul yesterday’s judgement. That is why Umar (ra) said *“to return to the truth”* and he did not say to reverse your judgement. To return to the truth means to abandon the wrong opinion and adopt the right one. Therefore, the letter does not serve as evidence that it is permissible to annul a judgement. This is why in Islam there is nothing called judicial precedent. In other words, there is no place to say that in such and such a case the judgement would be so and so. If a certain verdict was passed on a particular case, that verdict does not oblige anyone else to judge accordingly. It is rather permitted to pass a different judgement on a similar case by a different judge if he thinks that the new ruling is more correct. As for the case itself, the rule of Allah (swt) would have been applied to it, therefore, the judge would be forbidden from annulling that rule or changing it. This is why there are no courts of appeal in Islam, and nor there is any court of cassation. The judiciary, from the point of view of process, should be of the same level. The *Shari’ah* principle states: *“Ijtihad is not annulled by another Ijtihad.”* So no *Mujtahid* could serve as an authoritative source for another *Mujtahid*, and thus it would be forbidden to have courts that annul the judgements of other courts.

However if the judge did not rule by the Islamic *Shari’ah* rules, and ruled by *Kufr*, or by what contradicts a definite text from the Quran, *Sunnah* or *Ijma’* of the companions, or what

contradicts the reality of the situation, such as giving a ruling of Qisas as a result of killing someone, and then the real killer became apparent, then in these situations and similar the rule of the judge is nullified. This is due to the words of the Messenger of Allah ﷺ

«مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ فِيهِ فَهُوَ رَدٌّ»

“Whoever introduces into this matter (Islam) of ours something which does not belong to it, then it is rejected” (reported by Al-Bukhari and Muslim from Aishah(ra)). And it is reported by Abu Dawud from Jabir

«أَنَّ رَجُلًا زَنَى بِامْرَأَةٍ، فَأَمَرَ بِهِ النَّبِيُّ ﷺ فَجُلِدَ الْحَدَّ، ثُمَّ أُخْبِرَ أَنَّهُ مُحْصَنٌ فَأَمَرَ بِهِ فَرُجِمَ»

“A man committed fornication with a woman, so the Messenger ﷺ commanded that he be lashed, then he was told that he was married, and so he ﷺ commanded that the man be stoned.” and Malik Bin Anas reported in *Al-Muwatta*

(أَنَّ عُثْمَانَ بْنَ عَفَّانَ أَتَى بِامْرَأَةٍ قَدْ وَلَدَتْ فِي سِتَّةِ أَشْهُرٍ فَأَمَرَ بِهَا أَنْ تُرْجَمَ فَقَالَ لَهُ عَلِيُّ بْنُ أَبِي طَالِبٍ: لَيْسَ ذَلِكَ عَلَيْهَا إِنَّ اللَّهَ تَبَارَكَ وَتَعَالَى يَقُولُ فِي كِتَابِهِ: ﴿وَحَمْلُهُ وَفَصْلُهُ ثَلَاثُونَ شَهْرًا﴾ [الأحقاف ١٥] وَقَالَ: ﴿وَالْوَالِدَاتُ يُرْضَعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَمِّ الرِّضَاعَةَ﴾ [البقرة ٢٣٣] فَالْحَمْلُ يَكُونُ سِتَّةَ أَشْهُرٍ فَلَا رَجْمَ عَلَيْهَا فَبَعَثَ عُثْمَانُ بْنُ عَفَّانَ فِي أَثَرِهَا فَوَجَدَهَا قَدْ رُجِمَتْ)

“A woman who gave birth to a six-month baby was brought to ‘Uthman Bin ‘Affan and he ordered that she be stoned. Ali said to him: she does not deserve that since Allah said in His Book: “And his gestation and weaning [period] is thirty months.” (TMQ 46:15) and He said “Mothers may breastfeed their children two complete years for whoever

wishes to complete the nursing [period].” (TMQ 2:233) *which means that the pregnancy can be six months, and so she is not to be stoned. ‘Uthman sent for her, but found that she had already been stoned.*” And ‘Abd Al-Razzaq reported from Imam Al-Thawri “if a judge ruled in contradiction to the Book of Allah, or the *Sunnah* of the Messenger of Allah ﷺ, or something agreed upon, then the judge after him should nullify it”.

The one who has the power to nullify these rulings is the judge of the *Madhalim*.

Article 84

The *Muhtasib* is the judge who investigates all cases, in the absence of an individual litigation, involving the rights of the public that do not involve the *Hudud* (proscribed punishments) and criminal acts.

This article is the definition for the judge of the Hisbah, and it is taken from the narration regarding the heap of the food, since the Messenger ﷺ found dampness in the heap of the food and ordered that it should be placed on top of the food so that the people could see it. Accordingly, these were the general rights of the people that the Messenger ﷺ was looking into and judged upon by ordering the moist food to be placed on the top of the heap in order to remove any cheating. This encompasses all of the rights which are of this type, and does not encompass the *Hudud* and criminal acts, since they are not of this nature, and because the origin here is the disputed issues between people.

Article 85

The *Muhtasib* has the authority to judge upon violations as soon as he learns of them, irrespective of the location and without the need to hold a court session. A number of policemen are put at his disposal to carry out his orders and to execute his verdicts immediately.

This article clarifies that a judicial court would not be required for the *Muhtasib* to look into the case at hand, rather he passes the judgement upon the offence the moment he is sure that it took place, and he has the power to judge at any place and at anytime, whether in the market, in the house, while riding on the back of an animal or in the car, or during the day or night. This is because the evidence that confirms the need to have a judicial court in order to rule upon a case does not apply to the *Muhtasib*, because the narration which confirmed this condition states

«أَنَّ الْخَصْمَيْنِ يَقْعُدَانِ بَيْنَ يَدَيِ الْحَكَمِ»

“that the two litigants have to sit in front of the judge”
and

«إِذَا جَلَسَ إِلَيْكَ الْخَصْمَانِ»

“when the two litigants sit in front of you” (reported by Ahmad from Ali (ra)). This situation does not exist with the judge of the Hisbah. For there is no plaintiff and no defendant, but rather there is a public right that has been violated or there is a violation of the *Shari’ah*. Also, when the Messenger of Allah ﷺ looked into the case of the heap of food, he ﷺ was walking in the market at the time and the food was displayed for sale. He ﷺ did not summon the vendor to him, but as soon as he detected the offence he dealt with it on the spot. This indicates that the cases of Hisbah do not require a judicial court.

Article 86

The *Muhtasib* has the right to appoint deputies for him. They should fulfil the requirements of the *Muhtasib*, and he is allowed to assign them to different places. Those deputies would have the power to carry out the duties of the Hisbah in the areas to which they have been assigned, and in the cases for which they have been delegated.

This article is restricted by whether the appointment of the *Muhtasib* included the right to appoint delegates for him; or in other words, the right to appoint others. This is if he had been appointed by the *Khalifah*. However, if the appointment was made by the Supreme Judge, the clause must be approved first, and in addition to this, the appointment of the Supreme Judge must include a clause that gives him power to allow the judges that he appoints to delegate others to act on their behalf, in other words, to give them the right to have deputies. If the Supreme Judge did not have such power, then he would not be in a position to approve such delegation, thus the *Muhtasib* would not be allowed to have deputies; in other words, he would not have the right to delegate. The power of the judge to delegate on his behalf, whether it be the *Muhtasib*, the Qadi (judge) or the judge of the Court of Injustices (*Madhalim*), is not in the hands of the judge unless the *Khalifah* allows him to do so or if the permission to recruit judges and to allow those appointed to delegate were given to the Governor of the Judiciary, in other words, the Supreme Judge. This is because the judge is appointed to the judiciary, in other words, a specific type of judiciary, which is the Hisbah. Therefore, if he were not given the right to delegate, in other words, the right to appoint a deputy for himself, he would not then possess the mandatory power to appoint anyone. This applies to the Qadi and the judge of the Court of Injustices (*Madhalim*), for each of them would be appointed to the judiciary according to the appointment clause, and they do not possess any other power, in other words, they do not have the power to appoint judges unless it was mentioned in the contract of their

appointment. For this reason, he does not have the right to appoint deputies to perform the duties of Hisbah on his behalf, unless this was part of his contract. The same applies to the Supreme Judge.

As for the permissibility of appointing deputies, this is because when the Messenger of Allah ﷺ was presented with a case, he appointed someone as a delegate for himself. Accordingly, in the incident of the desert Arab who came to the Messenger of Allah ﷺ and informed him that his son was working for a man and he committed adultery with the man's wife and asked him for the verdict, the Messenger of Allah ﷺ said at that incident,

«وَأَعْدُ يَا أُنَيْسُ - رجل من أسلم - إِلَى امْرَأَةٍ هَذَا، فَإِنْ اعْتَرَفَتْ فَارْجُمُهَا»

“O Unais! Go to the wife of this (man) and if she confesses (that she has committed illegal sexual intercourse), then stone her to death.” (agreed upon from Abu Hurayrah and Zayd Bin Khalid), which indicates that the judge can send a delegate on his behalf to judge upon an issue that he has specified for him, and in the same way this can be for the *Muhtasib* since he is a judge. However, the judge must allow his deputy to deal with the case as a whole; in other words, he must be allowed to look into the complaint and pronounce judgement himself, if the appointment to deputise is to be considered valid. This is because the judiciary is the conveying of the rule which is then binding, so in this context it cannot be split, and ,therefore, he cannot appoint him to merely investigate without judging but rather the appointment must be complete so that he becomes a judge and his judgement becomes valid. Even if he did not actually pronounce a judgement, his work would be valid, since it is not a condition for him to act as a judge - a judge could look into a case, and before completing his work and pronouncing his judgement, he could be relieved of his duties, and then the case would be referred to another judge who would pass judgement. The same applies to the judge's deputy - it is not a condition for him to pass judgement, but he must be given the right to investigate and pass judgement

when appointed; in other words, he must be appointed as a full judge, holding all the mandatory powers given to a judge. The same applies to the *Muhtasib* - he appoints deputies with powers to investigate and judge in the cases he assigns for them, or in the areas in which he places them, if he has been given the power to appoint deputies. The conditions for those whom the judge appoints as his deputies are that they must be Muslim, free, just, adult and possessing knowledge of jurisprudence in the issues which he will be looking into; in other words, the deputy of the *Muhtasib* has the same conditions as the *Muhtasib* since they are both judges.

Article 87

The judge of the Court of Injustices (*Madhalim*) is appointed to remove all injustices which have been inflicted upon any person who lives under the authority of the State, irrespective of whether the person is from the subjects of the State or not, and irrespective of whether the injustice was committed by the *Khalifah* or anyone below him from the rulers and civil servants.

This article has the definition of the judge of the Court of Injustices (*Madhalim*) and the basis for the Judiciary of Injustices (*Madhalim*) is what was narrated from the Prophet ﷺ when he described any act carried out by the ruler on other than the truth while ruling over the subjects as being an injustice (*Madhlamah*). Anas reported: *Prices soared during the time of the Messenger of Allah ﷺ so they said to him:*

«إِنَّ اللَّهَ هُوَ الْخَالِقُ الْقَابِضُ الْبَاسِطُ الرَّازِقُ الْمُسَعِّرُ، وَإِنِّي لأَرْجُو أَنْ أَلْقَى اللَّهَ وَلَا يَطْلُبُنِي أَحَدٌ بِمَظْلَمَةٍ ظَلَمْتُهَا إِيَّاهُ فِي دَمٍ وَلَا مَالٍ»

“O Messenger of Allah! Set prices for us! He said 'Truly, Allah is the Creator, the Restrainer, the Extender of

wealth, the Provider, and the Pricer. And I am hopeful that I will meet Allah and none of you are seeking (recompense from) me for an injustice (I inflicted) involving blood or wealth.” (reported by Ahmad). So he ﷺ considered price fixing as an injustice (*Madhlamah*), because if he ﷺ had done it he ﷺ would have done something that he ﷺ had no right to do. In the same manner, he ﷺ also made the issues that affect the public rights which the State organises for the people as part of the injustices (*Madhalim*), such as the irrigation of farming lands by common water by taking turns. The Messenger of Allah ﷺ looked into the dispute over irrigation that took place between Al-Zubayr Bin Al-‘Awwam (ra) and a man of the Ansar. He ﷺ witnessed it personally and said to Al-Zubayr (ra):

«اسْقِ يَا زُبَيْرُ ثُمَّ أَرْسِلِ الْمَاءَ إِلَى جَارِكَ»

“O Zubayr! water and then let the water flow to your neighbor” (agreed upon and the wording is from Muslim). Therefore, any injustice (*Madhlama*) that occurs against any person, whether perpetrated by the ruler, or as a result of the State’s organisations or orders, would be considered as an injustice (*Madhlama*), as understood from the two narrations. The matter would be referred to the *Khalifah* to rule upon it or whoever deputises for the *Khalifah* from the judges of the Court of Injustices (*Madhalim*).

Article 88

The judge of the Court of Injustices (*Madhalim*) is appointed by the *Khalifah*, or by the Supreme Judge. His accounting, discipline and removal are done by the *Khalifah* or by the Supreme Judge if the *Khalifah* had given him the powers to do so. However he cannot be removed during his investigation of a *Madhlamah* against the *Khalifah*, or the executive assistants, or the Supreme Judge; rather the power to remove

him in these circumstances is for the Court of Injustice Acts (*Madhalim*).

The judge of *Madhalim* is appointed by the *Khalifah*, or by the Supreme Judge. This is because the *Madhalim* is part of the judiciary, for they are the conveying of the *Shari'ah* rule by way of enforcement, and all the types of judges must be appointed by the *Khalifah*. This is confirmed by the Messenger of Allah's ﷺ actions since he ﷺ used to appoint the judges as was explained previously. All this means that it is the *Khalifah* who appoints the judge of *Madhalim*, yet the Supreme Judge could appoint the judge of *Madhalim* if the *Khalifah* made provisions for this in his appointment clause. It is allowed for the main court of injustices (*Mahkamat Al-Madhalim*) in the centre of the State to examine only the *Madhalim* that occurred from the *Khalifah*, his assistants and the Supreme Judge. However, the branches of the court of injustices in the provinces examine the *Madhalim* that occur from the governors and the other State employees. The *Khalifah* has the right to give the Central Court of Injustices the authority of appointment and removal of the *Madhalim* judges in the branch *Madhalim* courts that come under its authority in the provinces.

The *Khalifah* is the one that appoints and removes the members of the main court of injustices in the centre of the State. As for the removal of the head of the central court of injustices - in other words, the *Madhalim* judge responsible in examining the removal of the *Khalifah* - it should in principle be the right of the *Khalifah* to remove him, as it is he who has the right to appoint him like all the judges. However, it is possible, if the power of removing the judge were left to the *Khalifah* during a case, then this power would lead to something prohibited. In such a situation the principle of

(الوسيلة إلى الحرام حرام)

“the means to something forbidden is also forbidden”

would apply. The strong likelihood of such a scenario arising is enough for applying this principle.

This situation is when there is a case against the *Khalifah* or his assistants or his Supreme Judge (in case the *Khalifah* was given the mandatory power of appointing and removing the *Madhalim* judge). This is because keeping the mandatory power of removing the *Madhalim* judge in the hands of the *Khalifah* in this case would influence the verdict by the judge and accordingly it would limit the capability of the judge to remove the *Khalifah* or his assistants if deemed necessary. This mandatory power of removing the judge in this case is a means for *Haram*, or in other words, leaving it in the hand of the *Khalifah* in this case is prohibited.

As for the remaining cases, the rule remains as it is; in other words, the power of removing the *Madhalim* judge is left to the *Khalifah*, just like his appointment.

Article 89

There is no limit to the number of judges that can be appointed for the Court of Injustice Acts (*Madhalim*), rather the *Khalifah* can appoint as many as he may deem necessary to eradicate the *Madhalim* (injustice acts), whatever that number may be. Although it is permitted for more than one judge to sit in a court session, only one judge has the authority to pronounce a verdict. The other judges only assist and provide advice, and their advice is not binding.

The evidence that the judge of the Court of Injustices (*Madhalim*) can be more than one is that the *Khalifah* is permitted to appoint one or more deputies to act on his behalf. However, if there are a number of judges of the Court of Injustices (*Madhalim*), their power to look into the injustices (*Madhalim*) cannot be divided, so each one of them would have the right to

look into the cases of injustices (*Madhalim*). The *Khalifah* is however allowed to specify a judge for the Court of Injustices (*Madhalim*) in one province, or to specify him to a certain type of case, because he has the right to give a general governorship over the injustices (*Madhalim*) or a specific governorship if he wished. He can give a governorship over the whole of the State, or over a city or region, as he sees fit.

As for the fact that when the judge of the Court of Injustices (*Madhalim*) looks into a case he should look into it on his own, this is because of what was mentioned earlier regarding the prohibition of having numerous judges in a single case, while it is permitted to have more than one judge in the same area. However, it is permitted for other judges of the Court of Injustices (*Madhalim*) to sit with him in court in a consultative capacity only, and they would not participate in the verdict. This is referred to his contentment and choice – so if he did not prefer that and opposed their sitting with him then they would not do so, since no one who distracts the judge from looking into his work should sit with him. However, if he left the court session he should consult them in the issue.

Article 90

The Court of Injustice Acts (*Madhalim*) has the right to remove any ruler or civil servant in the State, in the same way that it has the right to remove the *Khalifah*, if the elimination of the *Madhlamah* required this removal.

This article clarifies the powers of the Court of Injustices (*Madhalim*) with respect to removal of the rulers, since the ruler is appointed by a contract, known as the Contract of Assignment which is also called the Contract of Empowerment. The *Khalifah* has the right of the governorship which is the ruling, and he has the right of empowerment which is the appointment, and the

empowerment is a contract that can only be completed with direct wording. Therefore, the removal of the ruler appointed by the *Khalifah* would be a termination of that contract, and the *Khalifah* undoubtedly reserves that right since the Messenger ﷺ appointed the governors and removed them. The righteously guided *Khulafaa*’ also appointed the governors and removed them. In the same manner the *Khalifah* could also delegate to those whom he appointed the right to appoint and remove. However, the Court of Injustices (*Madhalim*) does not have the right to remove the rulers on behalf of the *Khalifah*, for it does not act on his behalf in appointing and removal; it rather acts on his behalf in looking into the injustices (*Madhalim*). So if the presence of that ruler in his province was an injustice (*Madhlamah*), the court has the right to remove that injustice (*Madhlamah*); in other words, it has the right to remove that ruler from office. Therefore, its power to remove the rulers is not done on behalf of the *Khalifah*, rather it is only removing the injustice (*Madhlamah*), and accordingly those who have been ruled upon to be removed are removed even if the *Khalifah* is not pleased with it, since his removal in this situation is the ruling upon the removal of an injustice (*Madhlamah*), and this applies to everyone including the *Khalifah*, since the ruling of the judge is a ruling for everyone.

As for its powers to remove the *Khalifah*, in the same manner it is ruling upon the removal of an injustice (*Madhlamah*), since if one of the circumstances where the *Khalifah* is removed automatically or necessitated his removal occurs, then his remaining in office would be an injustice (*Madhlamah*). And it is the Court of Injustices (*Madhalim*) which rules upon the removal of the injustices (*Madhalim*), so it is the one who rules upon his removal. Therefore, the judgement of the Court of Injustices (*Madhalim*) to remove the *Khalifah* would be a judgement aimed at removing an injustice (*Madhlamah*), and so if removal of the *Madhlamah* necessitated his removal, the judgement for his removal would be given.

Article 91

The Court of Injustice Acts (*Madhalim*) has the authority to investigate any case of injustice (*Madhlamah*), irrespective of whether it is related to officials of the State, the Head of State's deviation from the *Shari'ah* rules, interpretation of the legislative texts in the constitution, law (*Qanun*) and other *Shari'ah* rules within the framework adopted by the Head of State, or the imposition of a tax, or anything else.

Its evidence is that the Messenger ﷺ considered that price-fixing by the ruler was an injustice (*Madhlamah*), and saw that the arrangements of the State in setting the order of people to irrigate their land from the public water was an issue that could lead to an injustice (*Madhlamah*). This indicates that the action of the ruler which contradicts the Truth or the *Shari'ah* rules is an injustice (*Madhlamah*) if it was connected to the *Khalifah* (Head of State), because the Messenger ﷺ was the Head of State. And if it was connected to officials of the state it would also be an injustice (*Madhlamah*), because they are the delegates of the Head of State, and so it would also be connected to the *Khalifah* because it is connected to the action which they were delegated to and not to themselves as individuals. Accordingly, the narration regarding price fixing is evidence that the violation of the Head of State is an injustice (*Madhlamah*), and the Court of Injustices (*Madhalim*) is the entity which has the power to look into the injustices (*Madhalim*), which is the evidence for the first part of the article.

As for the second part, which is the investigation into a text for the constitution or canons, it is because the constitution is the basic law, and the law is the order of the authority, and so investigating it is investigating the order of the authority. Therefore, it comes under the narration regarding price fixing since it is an investigation of the actions of the *Khalifah*. Above and beyond that, Allah (swt) said,

﴿فَإِنْ تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ﴾

“And if you disagree over anything, refer it to Allah and the Messenger.” (TMQ 4:59), or in other words, if you and those in authority differed over something. Differing over an article of the constitution or law is a difference between the subjects and the people of authority regarding a *Shari’ah* rule, and so it is referred to Allah (swt) and His Messenger ﷺ – referring to Allah (swt) and His Messenger ﷺ is referring it to the Court of Injustices (*Madhalim*), in other words, to the judgement of Allah (swt) and His Messenger ﷺ.

With regards to the third part of the article, the Messenger ﷺ said,

«مَنْ أَخَذْتُ لَهُ مَالًا فَهَذَا مَالِي فَلْيَأْخُذْ مِنْهُ»

“Whoever I took property from, let him take from my property” reported by Abu Ya’la from Al-Fadl Bin Abbas, and he ﷺ said,

«وَإِنِّي لَأَرْجُو أَنْ أَلْقَى اللَّهَ وَلَا يَطْلُبْنِي أَحَدٌ بِمَظْلَمَةٍ ظَلَمْتُهَا إِيَّاهُ فِي دَمٍ وَلَا

مَالٍ»

“And I am hopeful that I will meet Allah and none of you are seeking (recompense from) me for injustice (I inflicted) involving blood or wealth,” (reported by Ahmad from Anas), and so the taking of wealth from the subjects by the *Khalifah* without right is considered an injustice (*Madhlahamah*), and to take the wealth which the *Shari’ah* did not obligate upon the subjects is an injustice (*Madhlahamah*), and due to this the Court of Injustices (*Madhalim*) can investigate the taxes since they are wealth taken from the subjects. Its investigation into the taxes is only to see whether that tax is lawfully obliged by *Shari’ah* upon the Muslims, such as the money taken to feed the needy, which would not be an injustice (*Madhlahamah*), or whether that tax is not obliged by the *Shari’ah*, such as money taken to build a dam that

is not considered essential, which would ,therefore, be an injustice (*Madhlahmah*) that has to be removed. This is why the Court of Injustices (*Madhalim*) has the power to examine taxes.

Article 92

The judiciary of the Injustice Acts (*Madhalim*) is not restricted by a court session or the request of the defendant or the presence of the plaintiff. It has the authority to look into any case of injustice even if there is no plaintiff.

Its proof is the evidence which confirms the conditions for the correct session to look into a case does not apply to the Court of Injustices (*Madhalim*) due to the absence of a plaintiff, since there is no requirement for the presence of a plaintiff, as it will look into the injustice (*Madhlahmah*) even if no one was a plaintiff. Also, the lack of necessity for the defendant to be present, because the court looks into the case without requiring the defendant to be present since it is looking closely at the injustice (*Madhlahmah*) and the defendant. Therefore, the evidence which makes the court session a condition - which is the words of the Messenger ﷺ

«أَنَّ الْخَصْمَيْنِ يَقْعُدَانِ بَيْنَ يَدَيِ الْحَكَمِ»

“The two litigants sit in front of the judge (between his hands).” reported by Ahmad and Abu Dawud from ‘Abd Allah Bin Al-Zubayr, and

«إِذَا جَلَسَ إِلَيْكَ الْخَصْمَانِ»

“when the two litigants sit in front of you” reported by Ahmad from Ali (ra) - does not apply. Based upon that, the Court of Injustices (*Madhalim*) can look into the injustice (*Madhlahmah*) simply due to it arising, without any restraint at all, neither due to location, time, nor court session, or anything else.

However, due to the position of this court, from the angle of its powers, it used to be surrounded by what gave it an imposing and great image. In the time of the Sultans in Egypt and *Ash-Sham* the sitting of the Sultan during which the injustices (*Madhalim*) were looked into was called “*The House of Justice*”, and one of his delegates would undertake the session with judges and jurists present. Al-Maqrizi mentioned in his book entitled “*Al-Suluk Ila Ma’rifat Duwal Al-Muluk*” (The Way to Know the States of the Kings), that the Sultan Al-Malik Al-Salih Ayyub appointed deputies to act on his behalf in the House of Justice. They used to sit there to remove the injustices (*Madhalim*), and there would be witnesses, judges and jurists all present. There is no harm in making the Court of Injustices (*Madhalim*) a splendid building, for this would be from the permitted issues, especially if this reflected the might of justice.

Article 93

Every person has the right to appoint whomsoever he wishes as a proxy (*Wakeel*) for oneself in the disputes and defence, irrespective of whether he is Muslim or not, male or female. There is no distinction in this matter between the commissioner and the proxy. The proxy is permitted to be appointed for a fee according to the terms agreed upon with the commissioner.

This article explains the permission of proxy in disputes, and its evidence is the evidence for the granting of proxy, since it is general and encompasses every type of proxy. Proxy is confirmed by the *Sunnah*; it is narrated by Abu Dawud with its chain of narration that Jaber Bin Abdullah said:

«أَرَدْتُ الْخُرُوجَ إِلَى خَيْبَرَ، فَأَتَيْتُ رَسُولَ اللَّهِ ﷺ فَسَلَّمْتُ عَلَيْهِ وَقُلْتُ لَهُ: إِنِّي أَرَدْتُ الْخُرُوجَ إِلَى خَيْبَرَ، فَقَالَ: إِذَا أَتَيْتَ وَكَيْلِي فَخُذْ مِنْهُ خَمْسَةَ عَشَرَ وَسُقًا، فَإِنْ ابْتَغَى مِنْكَ آيَةٌ فَضَعْ يَدَكَ عَلَى تَرْفُوتِهِ»

“I wanted to go out to Khaybar, so I went to the Messenger of Allah ﷺ and gave him a greeting and said: I am leaving. He said: ‘Go to my agent, and take fifteen loads from him. If he asks for a token from you, place your hand upon his collarbone.” (authenticated by Al-Hafiz in *Al-Talkhis*), and it is narrated from him ﷺ that he ﷺ gave proxy to Abu Rafi’ regarding the acceptance of marriage to Maymunah; Ahmad reported in *Al-Musnad* from Abu Rafi’:

«أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَزَوَّجَ مَيْمُونَةَ حَلَالًا وَبَنَى بِهَا حَلَالًا وَكَانَتِ الرَّسُولَ بَيْنَهُمَا»

“The Messenger of Allah married Maymuna, and I was the messenger between them”. So, anything that the person’s free conduct in is considered valid, and can be deputised, can be given as a proxy, whether male or female, Muslim or disbeliever. Also, the issue of proxy in disputes is itself confirmed by the *Ijma’* of the companions, since Ali (ra) gave a proxy to Uqayl before Abu Bakr (ra) and said

مَا قُضِيَ لَهُ فَلَئِي وَمَا قُضِيَ عَلَيْهِ فَعَلَيْي

“Whatever is ruled for him is for me, and whatever is ruled upon him is upon me”, and he appointed Abdullah Bin Jafar as a proxy to ‘Uthman (ra) and said **“disputes have perils (Quhms) and the devil attends them, and I hate to attend”**. This was mentioned by Ibn Qudamah in *Al-Mughni* and he said **“these stories have spread since they are famous and no one mentioned anyone who rejected them”**. The meaning of *Quhm* is destructive. Based upon this, proxy is permitted when requesting and establishing rights, whether the commissioner is present or absent

at the judgement, healthy or sick, and the agreement of the disputing party is not required since it is a right in which deputising is permitted without any restrictions irrespective of whether the disputing party agreed or not.

It is permitted for the proxy to be appointed for a fee, since it is a permitted type of employment, as employment is general and encompasses every issue including deputising. Because the definition of employment is a contract upon an exchange of a service for compensation and this applies to the service of proxy and so the definition applies to it. So if the appointment of proxy is done for a fee, then the proxy is entitled to the fee from the commissioner according to the terms that they are both content with. However, it is imperative that a contract of employment is put into effect and that both of them agree upon it in order for him to be entitled to the fee, because the appointment of proxy itself is a contract which does not necessitate any fee, but an agreed fee upon the contract is what would necessitate it. Accordingly, it is imperative that there is a contract of employment upon the proxy along with the contract of appointing the proxy. Both appointment of proxy and taking fee are permitted without restriction, irrespective of whether the person takes it as a profession with which he makes his living out of or not, and due to this the work of what is known today as lawyers and barristers is considered valid in terms of being valid to take a fee for it, but their seeking judgement from *Kufr* laws to confirm the truth from the falsehood is what is not permitted. Rather the truth is what Islam confirmed as the truth, and the falsehood is what it made false, and there is no value for what is different from that even if the rules of *Kufr* confirmed it.

Article 94

It is permitted for the one who has been vested with a specific responsibility, like a custodian or guardian, or general

responsibility such as the *Khalifah*, ruler, civil servant, *Muhtasib*, or judge of the Court of Injustice Acts (*Madhalim*), to appoint a person to his position as a proxy - within the bounds of his authority – in disputes and defence alone, and there is no difference whether they were the plaintiff or defendant.

Its evidence is the evidence for the giving of proxy, since as it is valid for a person to deputise another person to act on their behalf in the issue they have control over such as buying, selling, and disputes, in the same manner it is valid to deputise another person to act on their behalf in the issues they are acting on, on behalf of someone else. So the proxy, if given the right to deputise in the issue that they were given the proxy in, can deputise someone for themselves in that which they have control over as a result of being given the proxy. Accordingly, the guardian can deputise someone else to act on their behalf with the wealth of the one they are guardian over, and in the same manner the custodian of the *Waqf* is permitted to deputise whomever they please in all the affairs that he has the power of control over from the leasing of the *Waqf* and so on. Similar to them is the ruler, who is permitted to deputise whomever he pleases in any of the issues he has control over. Unless the ruler is the *Khalifah*, in which case it is permitted for him to deputise whomever he pleases because he possesses control over every matter, and so he is like the one who deputises on his own behalf, whereas anyone other than the *Khalifah*, from those who are his delegates such as the assistants, governors, and department managers, do not have the power to deputise on their behalf in that which they have been deputised control over unless the *Khalifah* gave them the right to do so. This is because they are the delegates of the *Khalifah*, and so they are similar to the deputies, and the deputy has no right to deputise his duty unless he was given that right. So if his deputation gave him that power, then he would have the right of deputation irrespective of whether he was a plaintiff or defendant,

since the right to deputise is general and encompasses every issue that he acts in. Based upon that, what is known today as the attorney general (lawyer of the government), and the public prosecutor and prosecution, or anything else similar, then from the angle of the rules of proxy the work is valid according to the *Shari'ah*, since the *Shari'ah* permitted this type of deputation.

Article 95

The contracts, transactions, and verdicts which were ratified and whose implementation was completed before the establishment of the *Khilafah* are not nullified by the judges of the *Khilafah* and nor do they review them, unless a case:

- a. Has a continued effect which contradicts Islam, so it is obligatory to review it.**
- b. Or if it was connected with harm to Islam and the Muslims which was brought about by the previous rulers and their followers, and so it is permitted for the *Khalifah* to review such cases.**
- c. Or if it was connected to wealth which had been misappropriated and still remains in the hands of the one who had taken it.**

Considering the contracts, transactions, and cases which were ratified and whose implementation was completed before the establishment of the *Khilafah*, they are considered valid between their parties when their implementation was completed before the *Khilafah*, and the judges of the *Khilafah* do not nullify them nor restart them and would not entertain any discussions around them after the establishment of the *Khilafah*.

There are three exceptional circumstances:

1. If the case which had been ratified and whose implementation had ended, has a continued effect against Islam.
2. If the case was connected to harming Islam and the Muslims.
3. If the case was connected to the misappropriation of wealth which remains in the hand of the one who had misappropriated it.

With respect to not voiding the contracts, transactions and cases which were ratified and whose execution was completed before the establishment of the *Khilafah* state, this is because the Messenger ﷺ did not void the transactions, treaties, and verdicts of the time of *Jahiliyyah* when their abode became the abode of Islam (*Dar Al-Islam*). The Messenger ﷺ after the conquest of Makkah did not return to the house which he had emigrated from, when Uqayl b. Abi Talib had inherited – in accordance with the laws of the Quraysh – the houses of his clan who had accepted Islam and emigrated, and had dealt with them and sold them, amongst them the house of the Messenger ﷺ. At that time it was said to the Messenger ﷺ :

(في أي دورك تنزل؟) فقال ﷺ: «وَهَلْ تَرَكَ لَنَا عَقِيلٌ مِنْ رِبَاعٍ»

"Which house will you take?", and so he ﷺ said ***“Did Aqil leave us any land ?”*** and in a narration

«وَهَلْ تَرَكَ لَنَا عَقِيلٌ مِنْ مَنْزِلٍ»

“Did Aqil leave us any house?”,

and he had sold the houses of the Messenger of Allah ﷺ and he ﷺ did not void those transactions. And the narration as reported by Al-Bukhari from Usamah Bin Zayd

(أَنَّهُ قَالَ زَمَنَ الْفَتْحِ يَا رَسُولَ اللَّهِ أَيْنَ تَنْزِلُ غَدًا؟ قَالَ النَّبِيُّ ﷺ: «وَهَلْ تَرَكَ لَنَا عَقِيلٌ مِنْ مَنْزِلٍ؟!»)

“He said at the time of the conquest: O Messenger of Allah where will you stay tomorrow”? The Prophet ﷺ said “And did Aqil leave us any house?”

. In the same vein it is reported that when Abu 'l-'Aas b. Al-Rabi' became Muslim and emigrated to Madinah – and his wife Zaynab, the daughter of the Messenger of Allah ﷺ, had become Muslim and emigrated after Badr while he remained on his *Shirk* in Makkah – the Messenger returned his wife Zaynab to him without renewing his marriage contract with her, confirming the contract they had in the period of *Jahilliyah*. Ibn Maja reported from Ibn Abbad

«أَنَّ رَسُولَ اللَّهِ ﷺ رَدَّ ابْنَتَهُ عَلَى أَبِي الْعَاصِ بْنِ الرَّبِيعِ بَعْدَ سَنَتَيْنِ بِنِكَاحِهَا الْأَوَّلِ» وفي رواية أحمد: «حَدَّثَنَا يَزِيدُ قَالَ أَخْبَرَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ دَاوُدَ بْنِ حُصَيْنٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ رَدَّ ابْنَتَهُ زَيْنَبَ عَلَى أَبِي الْعَاصِ زَوْجَهَا بِنِكَاحِهَا الْأَوَّلِ بَعْدَ سَنَتَيْنِ وَلَمْ يُحْدِثْ صَدَاقًا»

“The Messenger of Allah ﷺ returned his daughter to Abu Al-'As b. Al-Rabi' after two years, on the basis of the first marriage contract” and in the report in Ahmad ***“Yazid said to us that Muhammad Bin Ishaq informed us from Dawud Bin Husain from Akrama from Ibn 'Abbas that the Messenger of Allah returned his daughter to Abu Al-Aas, her husband, on the basis of the first marriage contract, after two years, and did not take a new dowry”***. This took place after Abu Al-'As had embraced Islam.

With regards to dealing with the cases that have a continuous effect that contradicts Islam, the Messenger of Allah ﷺ voided the interest that remained upon the people after they became part of the Islamic State, and allowed them to keep their capital. In other

words, once *Dar Al-Islam* was established whatever was left to them in terms of interest was voided. Abu Dawud reported through Sulayman b. ‘Amr from his father: I heard the Messenger of Allah ﷺ say in his farewell pilgrimage:

«أَلَا إِنَّ كُلَّ رِبَا مِنْ رَبَا الْجَاهِلِيَّةِ مَوْضُوعٌ، لَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ»

“All claims to usury (interest) of the pre-Islamic period have been abolished. You shall have your capital sums, deal not unjustly, and you shall not be dealt with unjustly.” In the same manner, those who had married more than four in accordance with the laws of *Jahilliyyah*, after they were part of the *Dar Al-Islam* they were compelled to keep just four. Al-Tirmidhi reported from Abdullah Bin Umar that Ghaylan Bin Salamah Al-Thaqafi embraced Islam, and he had ten wives in *Jahiliyyah* who embraced Islam with him,

«فَأَمَرَهُ النَّبِيُّ ﷺ أَنْ يَتَخَيَّرَ أَرْبَعًا مِنْهُنَّ»

“so the Prophet ﷺ ordered him to select four from amongst them”.

Based upon this, the contracts which have a continuous effect that contradicts Islam are to have the effect removed after the establishment of the *Khilafah*, and this removal is obligatory.

For example, if a woman embraced Islam and she was married to a Christian before Islam, after the *Khilafah* this contract would be voided in accordance with the *Shari’a* rules.

As for dealing with the cases that inflict hurt upon Islam and the Muslims, this is because the Messenger ﷺ ordered the killing of a few men who had caused harm to Islam and the Muslims during the time of *Jahiliyyah* after the conquest of Makkah, and so they were killed even if they tied themselves to the curtains of the Ka’bah, in knowledge that the Messenger of Allah ﷺ said

«إِنَّ الْإِسْلَامَ يَجُبُّ مَا كَانَ قَبْلَهُ»

“Islam wipes away what was before it” (reported by Ahmad and Al-Tabarani from Amr b. Al-‘As); in other words, whoever harms Islam and the Muslims is an exception to this narration.

Since the Messenger ﷺ gave amnesty to some of them, such as ‘Ikrimah b. Abi Jahl, it is permitted for the *Khalifah* to apply the case upon them or give them amnesty. This is applied upon those who torture the Muslims due to their saying the word of truth, or those who defame Islam, and so the narration

«إِنَّ الْإِسْلَامَ يَجُبُّ مَا كَانَ قَبْلَهُ»

“Islam wipes away what was before it” does not apply to them, rather they are an exception to it, and the application of the case upon them is in accordance with whatever the *Khalifah* decides.

As for dealing with cases to do with misappropriated wealth that remains with the one who misappropriated it, Muslim reported from Wa’il Bin Hujr who said

«كُنْتُ عِنْدَ رَسُولِ اللَّهِ ﷺ فَأَتَاهُ رَجُلَانِ يَخْتَصِمَانِ فِي أَرْضٍ فَقَالَ أَحَدُهُمَا إِنَّ هَذَا انْتَزَى عَلَيَّ أَرْضِي يَا رَسُولَ اللَّهِ فِي الْجَاهِلِيَّةِ وَهُوَ امْرُؤُ الْقَيْسِ بْنِ عَابِسٍ الْكِنْدِيُّ وَخَصَّمُهُ رَبِيعَةُ بْنُ عَبْدِ اللَّهِ قَالَ: بَيِّنْتُكَ، قَالَ: لَيْسَ لِي بَيِّنَةٌ، قَالَ: يَمِينُهُ، قَالَ: إِذَنْ يَذْهَبُ بِهَا، قَالَ: لَيْسَ لَكَ إِلَّا ذَاكَ، قَالَ: فَلَمَّا قَامَ لِيُخْلِفَ قَالَ رَسُولُ اللَّهِ ﷺ مَنِ اقْتَطَعَ أَرْضًا ظَالِمًا لِقِيَّيَ اللَّهِ وَهُوَ عَلَيْهِ غَضَبَانُ»

“I was with the Messenger of Allah ﷺ and two men came there disputing over a piece of land. One of them said: Messenger of Allah, this man appropriated my land without justification in the days of ignorance. The (claimant) was Imru'l-Qais b. 'Abis Al-Kindi and his opponent was Rabi'a b. 'Iban. The Prophet ﷺ said (to the claimant): Have you evidence

(to substantiate your claim)? He replied: I have no evidence. Upon this the Messenger of Allah ﷺ remarked: Then his (that is of the defendant) is the oath. He (the claimant) said: In this case he (the defendant) would appropriate this (the property). He ﷺ said: There is than no other way left for you but this. He (the narrator) said: When he (the defendant) stood up to take oath, the Messenger of Allah ﷺ said: He who appropriated the land wrongfully would meet Allah in a state that He would be angry with him”.

The Messenger accepted to listening to the claim of the man regarding land misappropriated with knowledge that this occurred in *jahilliyah*.

Accordingly, whoever took a piece of land, or misappropriated a pasture of an individual's wealth, or took some wealth from the public or state property, and it was misappropriated, the claim regarding it would be accepted.

As for anything other than these three situations, the contracts, transactions, and cases before the *Khilafah* are not voided nor restarted, so long as they had been concluded and executed before the establishment of the *Khilafah*.

For example if a man had been given a two year jail sentence for the charge of breaking school doors, and he had completed the two years before the establishment of the *Khilafah* and had left prison, and then after the establishment of the *Khilafah* he wanted to make a claim against his imprisonment since he thought he did not deserve prison, this claim is not accepted, since the case occurred and was ruled upon and executed before the establishment of the *Khilafah*, and so his account is with Allah (swt).

If a man was sentenced to ten years of which two years had passed and then the *Khilafah* was established, then in this case the *Khalifah* can look into it, and can remove the punishment in its entirety, so the man leaves prison innocent of what he was accused of, or suffices with what was spent, in other words, the

sentence given to him is considered to be two years and he leaves the prison or the remaining sentence is looked at and the *Shari'a* laws are complied with in respect to what has a relation to what is correct for the citizens, and especially the cases connected to the individuals' rights, and what is correct between people.

The Administrative System

Article 96

Management of the government's and people's affairs is carried out by offices, departments, and administrations, whose task is to ensure the management of the State's business and the carrying out of the people's interests.

The Messenger of Allah ﷺ used to run and carry out the affairs and appoint secretaries for their administration. Thus, the Messenger ﷺ used to carry out the affairs of the people in Madinah, solve their problems, organise their relations, secure their needs, and direct them to that which suited them. All of these matters are of the administration issues that eased their life from problems or complications:

In matters of education, the Messenger of Allah ﷺ made the ransom of the disbelieving prisoners of war the teaching of ten Muslims, where the ransom (the teaching of ten Muslims) was in return for spoils (education), which became property of the Muslims. Thus, securing education was one of the Muslims' affairs.

In healthcare, the Messenger of Allah ﷺ was given a doctor as a gift, but he assigned him to the Muslims. The fact that the Messenger of Allah ﷺ received a gift and he ﷺ did not use it, nor take it, but rather assigned it to the Muslims is evidence that healthcare is one of the interests of the Muslims.

In regards to employment, the Messenger of Allah ﷺ directed a man to buy a rope and then an axe and collect firewood and sell to the people instead of begging from them, where somebody might give him while another would resist. Thus, solving the problems of work was also one of the Muslims' interests. Abu Dawud and Ibn Maja narrate:

«أَنَّ رَجُلًا مِنَ الْأَنْصَارِ أَتَى النَّبِيَّ ﷺ يَسْأَلُهُ، فَقَالَ: أَمَا فِي بَيْتِكَ شَيْءٌ؟ قَالَ: بَلَى ... قَالَ: انْتَبِي بِهِمَا، قَالَ: فَأَتَاهُ بِهِمَا، فَأَخَذَهُمَا رَسُولُ اللَّهِ ﷺ بِيَدِهِ وَقَالَ: مَنْ يَشْتَرِي هَذَيْنِ؟ ... قَالَ رَجُلٌ: أَنَا آخِذُهُمَا بِدِرْهَمَيْنِ، فَأَعْطَاهُمَا إِيَّاهُ وَأَخَذَ الدِّرْهَمَيْنِ، وَأَعْطَاهُمَا الْأَنْصَارِيَّ وَقَالَ: اشْتَرِ بِأَحَدِهِمَا طَعَامًا فَأَنْبِذْهُ إِلَى أَهْلِكَ، وَاشْتَرِ بِالْآخَرِ قِدُومًا فَأُتِنِي بِهِ، فَأَتَاهُ بِهِ، فَشَدَّ فِيهِ رَسُولُ اللَّهِ ﷺ عُودًا بِيَدِهِ ثُمَّ قَالَ لَهُ: اذْهَبْ فَاحْتَطَبْ وَبِعْ، وَلَا أَرَيْتَكَ خُمُسَةَ عَشَرَ يَوْمًا، فَذَهَبَ الرَّجُلُ يَحْتَطِبُ وَيَبِيعُ، فَجَاءَ وَقَدْ أَصَابَ عَشْرَةَ دَرَاهِمَ ...»

“A man of the Ansar came to the Prophet (ﷺ) and begged from him. He (the Prophet) asked: Have you nothing in your house? He replied: Yes...He said: Bring them to me. He then brought these articles to him and he (the Prophet) (ﷺ) took them in his hands and asked: Who will buy these? ... A man said: I shall buy them for two dirhams. He gave these to him and took the two dirhams and, giving them to the Ansari, he (ﷺ) said: Buy food with one of them and hand it to your family, and buy an axe and bring it to me. He then brought it to him. The Messenger of Allah (ﷺ) fixed a handle on it with his own hands and said: Go, gather firewood and sell it, and do not let me see you for a fortnight. The man went away and gathered firewood and sold it, and he earned ten dirhams”. Al-Bukhari reported from Abu Hurayrah that the Messenger of Allah (ﷺ) said:

«لَأَنْ يَحْتَطِبَ أَحَدُكُمْ حُزْمَةً عَلَى ظَهْرِهِ خَيْرٌ لَهُ مِنْ أَنْ يَسْأَلَ أَحَدًا فَيُعْطِيَهُ أَوْ

يَمْنَعُهُ»

“It is better for anyone of you to carry a bundle of wood on his back and sell it than to beg someone whether he gives him or refuses.”

On the issue of roads, the Messenger of Allah ﷺ organised the roads at his time by making the road of seven cubits in case of dispute. Al-Bukhari narrated from Abu Hurayrah

«قَضَى النَّبِيُّ ﷺ إِذَا تَشَاجَرُوا فِي الطَّرِيقِ بِسَبْعَةِ أَدْعٍ»

“The Prophet ﷺ judged that seven cubits should be left as a public way when there was a dispute about the road”. The narration by Muslim says:

«إِذَا اخْتَلَفْتُمْ فِي الطَّرِيقِ جُعِلَ عَرْضُهُ سَبْعَ أَدْعٍ»

“If you dispute over a road its breadth should be made seven cubits”. Ahmad reported from Ibn ‘Abbas

«وَالطَّرِيقُ الْمِيتَاءُ سَبْعَةُ أَدْعٍ»

“The Messenger of Allah said: The frequented road is seven cubits” and in another report by Ahmad from ‘Ubada b. Al-Samit

«وَقَضَى ﷺ فِي الرَّحْبَةِ تَكُونُ بَيْنَ الطَّرِيقِ ثُمَّ يُرِيدُ أَهْلُهَا الْبُنْيَانَ فِيهَا فَقَضَى أَنْ يُتْرَكَ لِلطَّرِيقِ فِيهَا سَبْعَ أَدْعٍ»

“The Prophet ﷺ ruled that seven cubits should be left for the road in case people want to set aside an area (in the middle of the road) for their own building.”

This was from the administrative organisation of that time, and if there is need for wider than that it is allowed according to the opinion of the school of Al-Shafi'i.

The Messenger of Allah ﷺ has also prevented transgression against the road. Tabarani reported in *Al-Sagheer*:

«مَنْ أَخَذَ مِنْ طَرِيقِ الْمُسْلِمِينَ شِبْرًا طَوَّقَهُ اللَّهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرْضِينَ»

“Whoever takes a handspan from the road of Muslims Allah will encircle him from seven earths on the Day of Judgement.”

In matters of agriculture, Al-Zubayr disputed with a man from the Ansar regarding irrigating from a stream of water flowing in their lands. The Messenger of Allah ﷺ said:

«اسْقِ يَا زُبَيْرُ ثُمَّ ارْسِلِ الْمَاءَ إِلَى جَارِكَ»

“O Zubayr! water and then let the water flow to your neighbour” (agreed upon with the wording from Muslim).

Thus, the Messenger of Allah ﷺ used to run the affairs of the Muslims and solve their problems easily and simply, without complication. He ﷺ used to seek the help of some of the companions in conducting that, thus making the affairs of the people an organisation entrusted to the *Khalifah*, or he appointed a competent manager over it that took charge of it. This is what is adopted here so as to reduce the burden of the *Khalifah*, particularly since the affairs of the people have increased and branched out. Accordingly, there would be an organisation for the people’s affairs entrusted to a competent manager, and run by styles and means that assist the citizens living there, that provides for them the necessary services without complication and rather provides ease and simplicity.

This system consists of administrations, departments, and directorates. The administration is the overall management of any government affair, such as citizenship, transportations, money coinage, education, health, agriculture, employment, roads and others. This administration would undertake the management of its own affairs and all the departments and directorates under its control. The department would also run its own affairs and those of the directorates under its control. The directorate would also run its own affairs and the affairs of all the sections and divisions under its control.

The purpose of establishing these administrations, departments, and directorates, is to manage the State's affairs and to carry out the peoples' interests.

The administrative apparatus is a style from the styles of undertaking an action, and is an instrument from the various means, and so it does not require a specific evidence; it is sufficient to provide a general evidence that indicates its origin, and it cannot be argued that these instruments are the actions of the worshipper and ,therefore, it is not correct for them to proceed except in accordance with the *Shari'ah* rules. The reason this cannot be argued is because these actions are based upon a general evidence for their origin, and so it encompasses everything that branches off it in terms of actions, unless a specific *Shari'ah* evidence for the action which is a branch of the origin is found in which case the specific evidence is followed. For example, Allah (swt) says

﴿وَأَتُوا الزَّكَاةَ﴾

“And give Zakah” (TMQ 73:20), which is a general evidence, and there are evidences for the actions which branch out from it, for the calculation of the *Nisab* (amount after which *Zakat* is due upon the wealth), the collectors, and the categories which are eligible to receive the *Zakat*; these are all actions which branch out from

﴿وَأَتُوا الزَّكَاةَ﴾

“And give Zakah”. There are no evidences regarding how the collectors should collect it, whether they should be riding or walking, should they employ some people to help them with it or not, should it be recorded in a booklet, are they assigned a place where they gather, should they have a storage in order to place in it whatever is gathered, should the storage be underground or built like the grain warehouses and should the

Zakat which is monetary be collected in bags or boxes. These and similar issues are actions which branch out from

﴿وَأْتُوا الزَّكَاةَ﴾

“**And give Zakah**”, and they are encompassed by the general evidence since there is no specific evidence regarding them. This is the same for all the styles. Accordingly, the style is the action that is a branch of an action that has general evidence. Consequently, there is no need for it to have evidence, since the general evidence of its origin is an evidence for it.

For that reason the administrative styles can be taken from any system, if they were suitable to make the work of the administrative apparatus easier and fulfil the needs of the people, since the administrative styles are not a rule that requires *Shari'ah* evidence. Due to this, Umar (ra) took the style of the *Diwan* (register) for recording the names of the soldiers and citizens, in order to distribute the wealth to them from the public or state wealth such as benefits or salaries.

‘Abid Ibn Yahya reported on the authority of Al-Harith b. Nufayl that Umar (ra) consulted the Muslims about the recording of *Dawawin*, and ‘Ali b. Abi Talib (ra) suggested, “Divide all the funds you collect each year and do not keep any of it.” ‘Uthman b. ‘Affan (ra) said, "I see that there are a lot of funds being distributed amongst people, and if they are not counted in order to know who has taken and who has not, I fear that the matter could get out of hand." Upon this Al-Walid b. Hisham b. Al-Mughira said, “I was in *Al-Sham* and I noticed that its kings had introduced a *Diwan* and recruited soldiers, so why don't you do the same?" Umar (ra) took his advice and summoned ‘Aqil b. Abi Talib and Makhramah b. Nufayl and Jubayr Ibn Mat‘am, who were young men from Quraysh, and said, "Record the people according to where they live."

When Islam reached Iraq, the *Diwan* of payments and fund collection continued as before. The *Diwan* of *Al-Sham* was

in Latin for it had been part of the Roman Empires, and the *Diwan* of Iraq was in Persian for it had been part of the Persian Empire. At the time of Abdul Malik Ibn Marwan the *Diwan* of *Al-sham* was translated to Arabic (in the year 81 AH). Several *Dawaein* were then set up according to necessity and depending on the need for them in running the people's interests. *Dawawin* for the armed forces were introduced for registration and grant purposes, and others were introduced to record the fees and claims of all transactions. Another *Diwan* was introduced for the 'Amils and *Walis* to record each appointment and each removal and other *Dawaein* were used in the treasury (*Bayt Al-Mal*) to record revenues and expenses and so on. The introduction of a *Diwan* was depending on the need for it and its style varied over the years due to the difference in styles and means.

A chief was appointed for each *Diwan* along with other employees, and in some cases the chief was allowed to appoint the employees himself, and they were sometimes appointed to him.

A *Diwan* would thus be set up according to need, along with the styles and means that would help in carrying out that need. It is permitted to have different styles and means in every era, and in every province, and in every country.

Article 97

The policy of the administration of services is based on simplicity of the system, speed in processing tasks and competence of the administrators.

This is taken from the nature of processing the services, for the person who requires a service needs to have it quickly and efficiently processed. The Messenger of Allah ﷺ said

«إِنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ، فَإِذَا قَتَلْتُمْ فَاحْسِنُوا الْقِتْلَةَ، وَإِذَا ذَبَحْتُمْ فَأَحْسِنُوا الذَّبْحَ...»

“Verily Allah has prescribed Ihsan (proficiency, perfection) in all things. So if you kill then kill well; and if you slaughter, then slaughter well...” (narrated by Muslim from Shaddad b. Aws). Therefore, the perfection in executing actions is ordered by the *Shari’ah*. To achieve this, the administration should observe three qualities. **Firstly**: the simplicity of the system that would lead to the ease of processing, whereas complication would lead to hardship. **Secondly**: the speed in processing the transactions that would spare people of unnecessary delay. **Thirdly**: the ability and competence of the employees. This is required to perfect the performance and result of the task.

The reported evidences regarding these three include:

Simplicity

- The agreed upon narration from Abu Musa with the wording from Al-Bukhari: from Sa’id b. Abi Burdah from his father from his grandfather: When the Messenger ﷺ sent Mu’ath Bin Jabal he said:

«يَسِّرَا وَلَا تُعَسِّرَا، وَبَشِّرَا وَلَا تُنْفِرَا، وَتَطَاوَعَا...»

- *“Show leniency (to the people); do not be hard upon them; give glad tidings (of divine favors) to them; and don’t create aversion; work in collaboration.*
- The agreed upon narration from Anas, he said:

«يَسِّرُوا وَلَا تُعَسِّرُوا، وَسَكِّنُوا وَلَا تُنْفِرُوا»

- *The Prophet ﷺ said: Show leniency (to the people) and do not be hard upon them; calm people and do not arouse their aversion.”*

- The narration of Amr b. Murra found with Al-Hakim who authenticated it and Al-Dhahabi confirmed it, he said: I heard the Messenger of Allah ﷺ say

«مَنْ أَغْلَقَ بَابَهُ دُونَ دَوِي الْحَاجَةِ وَالْخِلَّةِ وَالْمَسْكِنَةِ، أَغْلَقَ اللَّهُ بَابَ السَّمَاءِ دُونَ خِلَّتِهِ وَحَاجَتِهِ وَفَقْرِهِ وَمَسْكِنَتِهِ»

- ***“Whoever closes his door to those of need, those with nothing, and the poor, Allah will close the door of the sky to his need, poverty, and want.”***
- The narration of Abu Maryam Al-Azdi with Al-Hakim who authenticated it and Al-Dhahabi confirmed it: I heard the Messenger of Allah ﷺ

«مَنْ وَلِيَ مِنْ أَمْرِ الْمُسْلِمِينَ شَيْئًا فَاحْتَجَبَ دُونَ خِلَّتِهِمْ وَحَاجَتِهِمْ وَفَقْرِهِمْ وَفَاقَتِهِمْ، احْتَجَبَ اللَّهُ عَزَّ وَجَلَّ يَوْمَ الْقِيَامَةِ دُونَ خِلَّتِهِ وَفَاقَتِهِ وَحَاجَتِهِ وَفَقْرِهِ»

- ***“If Allah puts anyone in the position of authority over the affairs of the Muslims, and he secludes himself (from them), not fulfilling their needs, wants, and poverty, Allah will keep Himself away from him, not fulfilling his need, want and poverty.”*** Al-Hakim said in *Al-Mustadrak* ‘*Ala Al-Sahihayn*: This narration has an authentic chain, Bukhari and Muslim did not report it, and its chain is an authentic *shami* one.
- The narration of Mu’adh with Ahmad and authenticated by Al-Zain: The Messenger of Allah ﷺ said:

«مَنْ وَلِيَ مِنْ أَمْرِ النَّاسِ شَيْئًا فَاحْتَجَبَ عَنْ أُولِي الضَّعْفَةِ وَالْحَاجَةِ، احْتَجَبَ اللَّهُ عَنْهُ يَوْمَ الْقِيَامَةِ»

- ***“Whoever takes charge of anything of the peoples’ affairs, and withdraws himself from those who are weak and needy, Allah Withdraws from him on the Day of Judgement”***

Speed in completion

- Al-Tabarani with a chain whose men are all trustworthy except for Baqiya, who is disagreed upon, from Abu Hurayra who said: The Messenger of Allah ﷺ said

«إِيَّاكُمْ وَالْإِفْرَادُ. قَالُوا: يَا رَسُولَ اللَّهِ وَمَا الْإِفْرَادُ؟ قَالَ: يَكُونُ أَحَدُكُمْ أَمِيرًا أَوْ عَامِلًا فَتَأْتِيهِ الْأَرْمَلَةُ وَالْمَسْكِينُ فَيُقَالُ لَهُ: انْتَظِرْ حَتَّى يُنْظَرَ فِي حَاجَتِكَ، فَيَتْرَكُونَ مُفْرَدِينَ لَا تُقْضَى لَهُمْ حَاجَةٌ وَلَا يُؤْمَرُونَ فَيَنْصَرِفُونَ، وَيَأْتِي الرَّجُلُ الْغَنِيِّ الشَّرِيفُ فَيَقْعُدُهُ إِلَى جَانِبِهِ ثُمَّ يَقُولُ: مَا حَاجَتُكَ؟ فَيَقُولُ: كَذَا وَكَذَا. فَيَقُولُ: اقْضُوا حَاجَتَهُ وَعَجِّلُوا بِهَا»

- *"I warn you from 'Iqrad.'" They asked: O Messenger of Allah what is 'Iqrad'? He said: For one of you to be an Amir or an 'amil, and the widowed and the weak come to him and it is said to him: Wait until we look into your need, and so they are left waiting unattended for. Their need is not dealt with nor are they told what to do and so they leave. A rich noble man comes and sits by his side and then says: What is your need? And he replies: such and such. And so he said: Take care of his need, and be quick about it".*
- Ibn Shabbah in his *Ta'rikh* reports from Ibn Shuthab who said: Umar (ra) said "O people, do not delay today's work until tomorrow, since if you did that the work would catch up with you such that you would not know to start what you left."
- Al-Shafi'i said in *Al-Umm*: More than one person of the people of knowledge informed us that when Umar Bin Al-Khattab (ra) came to see what they had gained from Iraq, the treasurer said to him: I will put it in the treasury (*Bayt Al-Mal*). He said: No by the Lord of the Ka'ba, it will not be placed under the roof of a house until I have divided it.

- Ahmad in *Al-Zuhd* and Ibn ‘Abd alBirr in *Al-Isti‘ab* and Ibn Abi ‘Asim in *Al-Zuhd*, from a number of people – that Ali (ra) used to order for the treasury to be swept and washed, then he would pray in it hoping that he would see the Day of Judgement and there was nothing being held in the treasury from the Muslims’ wealth.

Capability

- Ahmad from Huthaythah, with a *Hasan* chain, that the Messenger of Allah ﷺ said

«إِنَّ قَوْمًا كَانُوا أَهْلَ ضَعْفٍ وَمَسْكَنَةٍ فَاتَّاهَهُمْ أَهْلٌ تَجَبَّرَ وَعَدَدٍ، فَأَظْهَرَ اللَّهُ أَهْلَ الضَّعْفِ عَلَيْهِمْ، فَعَمَدُوا إِلَى عَدُوِّهِمْ فَاسْتَعْمَلُوهُمْ وَسَلَّطُوهُمْ، فَأَسْحَطُوا اللَّهَ عَلَيْهِمْ إِلَى يَوْمٍ يَلْقَوْنَهُ»

- ***“A people who were weak and poor fought against a people who were strong and plentiful, and Allah gave the victory to the weak amongst them. Then they took revenge upon their enemy by dominating them, and so Allah became angry with them until the day they would meet Him”***
- Muslim from Abu Musa who said that the Messenger of Allah ﷺ said
«إِنَّا وَاللَّهِ، لَا نُؤَلِّي عَلَى هَذَا الْعَمَلِ أَحَدًا سَأَلَهُ، وَلَا أَحَدًا خَرَصَ عَلَيْهِ»
- ***“By Allah we do not appoint someone to this post who seeks it or someone who contends for it .”***
- Al-Bayhaqi in *Al-Shub* from Umar (ra) who said “The only one who should judge between people is the one with sound judgement, skillful, does not look for shameful acts, is not hateful of his people, and is not afraid of the blame of the blamers.”
- Al-Hakim in *Al-Mustadrak* mentioned a narration from Zayd b. Aslam, from his father, from Umar (ra), which he

authenticated and Al-Dhahabi confirmed that: Umar (ra) said to his companions: Wish for something. Some of them said: I wish that this house was full of gold, which I could spend in the cause of Allah and give charity. A man said: I wish it was full of crystals and jewellery so I could spend it in the cause of Allah and give charity. Then Umar (ra) said: Wish for something, and so they said: We don't know O Leader of the Believers. And so Umar (ra) said: I wish that this house was full of men like Abu Ubaydah b. Al-Jarrah and Mu'adh b. Jabal and Salim the servant of Abu Huthayfah Huthaifah b. Al-Yaman."

Article 98

Anyone who carries citizenship, and is competent, whether male or female, Muslim or non-Muslim, can be appointed as a manager for an administration, a department, or a division, and to be a civil servant in it.

This has been taken from the rules regarding employment, since it is permitted to employ any employee, irrespective of being Muslim or non-Muslim, due to the generality of the evidences of employment; Allah (swt) said

﴿فَإِنْ أَرْضَعْنَ لَكُمْ فَكَاتُوهُنَّ أَجُورَهُنَّ﴾

“And if they breastfeed for you, then give them their payment.” (TMQ 65:6) which is general, and it is reported in Al-Bukhari from Abu Hurayrah that the Messenger ﷺ said

«قَالَ اللَّهُ: ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ ... وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا فَاسْتَوْفَى مِنْهُ وَلَمْ يُعْطِ أَجْرَهُ»

“Allah said: I am against three on the Day of Judgement...and a man who employed a worker and gets the

full work out of him, but does not pay him his wage.” which is general and not specific to the wage of Muslims. The Messenger ﷺ employed a man from *Bani Al-Dayl* who was upon the religion of his people, which indicates the permissibility of employing a non-Muslim in the same way as a Muslim. And in the same manner it is permitted to employ a woman in the same way that it is permitted to employ a man due to the generality of the evidences as well. Accordingly, it is permitted for a woman to be the manager of a department in a state department, and to be a civil servant in them, and it is permitted for a non-Muslim to be a manager of a department from the state departments as well as to be a civil servant, since they are employees, and the evidences for employment are general.

Article 99

A general manager has to be appointed for each office; and every department and administration has a manager who is responsible for its management, and is directly responsible for it; and they are accountable in terms of their work to whoever is in charge of the highest post of their offices, departments or administrations; and they are accountable in terms of their adherence to the general rules and systems by the governor and ‘Amil.

In order for the offices, departments, and administration to work they must have managers. Therefore, every office has a general manager who is directly in charge of managing the office affairs, and is responsible over all of the departments and administration that come under it. Each department and administration has an appointed manager who is directly responsible for it, and for all that comes under it in terms of branches and sections.

This is with respect to establishing the administration of offices, or establishing the *Diwan*, however, with respect to the responsibility of these civil servants, they are employees, and at the same time they are citizens, and so from one angle they are employees, in other words, from the angle of undertaking their work, they are accountable to their department head, or manager. And from the angle that they are citizens, they are accountable to the rulers from the governors and assistants, and in front of the *Khalifah*, and they are restricted by the *Shari'ah* rules, and the administrative systems.

Article 100

The managers in all departments, administrations, and divisions are not dismissed except for reasons connected with the administrative systems, but it is permitted to transfer them between posts or to suspend them from working. Their appointment, transfer, suspension, discipline, and removal are all done by whoever is in charge of the highest post of their office, department, or administration.

This is taken from the rules of employment, since if the employee is employed for a period it is not correct to remove him from what he has been employed to do, but it is possible to vacate him from the work, which is called suspension. However in this situation he deserves his pay, since employment is from the binding contracts and not the permitted contracts, so if the employment contract is contracted then the contract is binding upon both parties. As for the adherence to the administrative systems, this is like the conditions of employment, and so it is necessary to fulfil them; the Messenger ﷺ said

«الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ»

“The Muslims will be bound by their conditions”
reported by Abu Dawud from Abu Hurayra, and in the report by
Al-Hakim and Al-Daraqutni from 'Aisha (ra):

«الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ»

“The Muslims will be bound by their conditions”. As for transferring the person between posts, this is according to the contract of employment, so the one who is employed to dig a ditch is not transferred to building houses, and the state departments are the same manner. If someone is given a general appointment for a specific work, then it is permitted to transfer him from place to place in that work, and if he was given a general appointment, then it is permitted to transfer him without any restrictions; in other words, his transfer is carried out according to the contract of appointment.

Article 101

The civil servants other than the managers are appointed, transferred, suspended, disciplined, and removed by the one who is in charge of the departments, administrations or divisions.

The civil servants in the state are all employees, in accordance with the rules of employment. Their appointment and removal, transfer and discipline, are done by the one responsible for the highest administration of their offices, departments or administration.

This is based on the rules regarding employment, since it is obligatory to adhere to whatever is necessitated by their contract, just as it is obligatory upon him to adhere to what he was contracted for, since the contract is binding upon both parties upon what they agreed, so if the employee is employed for a

period, it is not valid to remove him from what he was employed to do for the defined period.

As for the adherence to the administrative systems, this is considered from the conditions of employment that must be adhered to. He ﷺ said,

«الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ»

“The Muslims will be bound by their conditions”
(reported by Abu Dawud from Abu Hurayrah). With respect to transferring the civil servants from one task to another, this falls under the employment contract and so it is treated according to the contract when appointed.

The one responsible to appoint, discipline and remove them is the one who is in charge of the highest administration of their offices, departments, and administrations, since he is the one who is responsible for the office they work in, and is the one who has the power that is necessitated by the responsibility he has been assigned to.

The Treasury (*Bayt Al-Mal*)

Article 102

The treasury (*Bayt Al-Mal*) is the administration responsible for the revenues and expenditure in accordance with the *Shari'ah* rules in terms of their collection, storage and spending. The head of the office of the treasury is called the Treasurer of the Treasury (*Khazin Bayt Al-Mal*). The offices in the provinces fall under it and the head of each office is called the Trustee of the Treasury (*Sahib Bayt Al-Mal*).

Bayt Al-Mal is a noun made from a genitive construction. It is used to mean the place where the state's revenues are kept until they are spent. It could mean the authority responsible for receiving and spending the funds entitled for Muslims.

We have adopted – as we explained earlier - that the governor is given a special authority that excludes the army, judiciary and funds. Thus, the whole army will be a central department (presided over by the *Amir of Jihad*). The judiciary will be a central department (known as judiciary) and the entire funds form a central department (known as the treasury), which is separate from any other organisation in the State, and is subordinate to the *Khalifah* as are the other organisations.

This is in addition to the fact that there are abundant evidences that the treasury was under the direct authority of the Messenger ﷺ or the *Khalifah*, or whoever he appointed to preside over it. The Messenger of Allah ﷺ would sometimes deal directly with the funds and he ﷺ had a safe. He ﷺ used to receive the funds, distribute them, and spend them in their due place. On other occasions he ﷺ used to appoint somebody to take care of that. This is what the righteous *Khulafaa'* used to do after him ﷺ,

where they either took charge of the treasury by themselves, or they delegated others to do that on their behalf.

The Messenger of Allah ﷺ used to place the funds in the mosque, as Al-Bukhari narrated from Anas, he said:

«أَتَى النَّبِيُّ ﷺ بِمَالٍ مِنَ الْبَحْرَيْنِ فَقَالَ: انْشُرُوهُ فِي الْمَسْجِدِ»

“Some funds were brought to the Prophet ﷺ from Bahrain. He said: ‘Spread it out in the mosque.’”

He would sometimes put it in one of the rooms of his wives, as it was narrated by Al-Bukhari from Uqbah, he said:

«صَلَّيْتُ وَرَاءَ النَّبِيِّ ﷺ بِالْمَدِينَةِ الْعَصْرَ، فَسَلَّمْتُ ثُمَّ قَامَ مُسْرِعًا، فَتَخَطَّى رِقَابَ النَّاسِ إِلَى بَعْضِ حُجَرِ نِسَائِهِ، فَفَزِعَ النَّاسُ مِنْ سُرْعَتِهِ، فَخَرَجَ عَلَيْهِمْ، فَرَأَى أَنََّّهُمْ عَجِبُوا مِنْ سُرْعَتِهِ، فَقَالَ: ذَكَرْتُ شَيْئًا مِنْ تَبَرِّ عِنْدَنَا، فَكْرِهْتُ أَنْ يَحْبِسَنِي، فَأَمَرْتُ بِقِسْمَتِهِ»

“I offered the `Asr prayer behind the Prophet ﷺ at Medina. When he finished the prayer with Taslim, he got up hurriedly and went out by crossing the rows of the people to one of the dwellings of his wives. The people got scared at his speed . The Prophet ﷺ came back and found the people surprised at his haste and said to them, "I remembered a piece of gold lying in my house and I did not like it to divert my attention from Allah's worship, so I have ordered it to be distributed (in charity) ”.

With respect to keeping it in a safe - Muslim narrated from Umar (ra) that he said:

«... فَقُلْتُ لَهَا: أَيْنَ رَسُولُ اللَّهِ ﷺ؟ قَالَتْ: هُوَ فِي حِزَانَتِهِ فِي الْمَشْرِقَةِ ... فَنَظَرْتُ بِبَصَرِي فِي حِزَانَةِ رَسُولِ اللَّهِ ﷺ فَإِذَا أَنَا بِقَبْضَةٍ مِنْ شَعِيرِ نَحْوِ الصَّاعِ، وَمِثْلُهَا قَرِظًا فِي نَاحِيَةِ الْعُرْفَةِ وَإِذَا أَفِيقُ مُعَلَّقًا. قَالَ: فَأَبْتَدَرْتُ عَيْنَايَ قَالَ: مَا يُبْكِيكَ يَا ابْنَ الْخَطَّابِ؟»

قُلْتُ: يَا نَبِيَّ اللَّهِ، وَمَا لِي لَا أَبْكِي وَهَذَا الْحَصِيرُ قَدْ أَثَّرَ فِي جَنْبِكَ، وَهَذِهِ خِرَازِنُكَ لَا أَرَى فِيهَا إِلَّا مَا أَرَى؟ ...»

“..So I said to her, ‘Where is the Messenger of Allah ﷺ?’ She said ‘He is in his safe in the wooden oriel.’ I gazed in the safe of the Messenger of Allah ﷺ and I suddenly saw an amount of barley of about one sa’ (a small cubic measure) and equal to that of tree fruits used for juice on one side of the room. I saw as well an un-tanned skin hanging in the room. My eyes wept. The Prophet said ‘What makes you weep, son of Al-Khattab?’ I said ‘O Prophet of Allah! Why I should not weep when this mat has influenced your side and this is your safe in which I do not see except that which I see...’.”

At the time of the righteous *Khulafaa*, the place in which funds were kept came to be known as *Bayt Al-Mal*. Ibn Sa’d mentioned in *Al-Tabaqat* from Sahl Ibn Abu Hathmah and others: “Abu Bakr used to have a house in Al-Sanh not guarded by anybody. So it was said to him, ‘Why do you not put somebody to guard it?’ He said, ‘It has a lock.’ He used to give out that which was in it until it became empty. When he moved to Madinah, he moved it and placed it in his house.” Hinad narrated in *Al-Zuhd* with a good chain from Anas, he said: “A person came to Umar and said, ‘O Leader of the Believers! Support me for I want to go in Jihad. Umar replied, ‘Hold his hand and take him to *Bayt Al-Mal* so he can take the funds he wants.” In *Al-Sunan Al-Kubra* by Al-Bayhaqi, which was authenticated by Ibn Hajar from ‘Abd Allah b. Wadi’ah, said: “Salim, the servant of Abu Hudhayfah, was a servant to a woman from us called Salma bint Ye’ar, she freed him in her days of Jahiliyyah. When he was killed in Al-Yamamah, his heritage was brought to Umar Ibn Al-Khattab. So he called upon Wadi’ah Ibn Khidham and said, ‘This is the heritage of your servant, and you deserve it more.’ He said, ‘O Leader of the Believers. Allah has made us of no need to him. Our woman has freed him unrestricted; so we do not want to bring disgrace to ourselves, (or to bring loss upon us) from his matter.’

So, Umar put his inheritance wealth in the *Bayt Al-Mal*.” Al-Bayhaqi and Al-Darimi narrated, and Ibn Hazm authenticated it: “Sufyan b. ‘Abd Allah b. Rabi’ah Al-Thaqafi found a leather bag and brought it to Umar b. Al-Khattab. He said, ‘Announce it for one year; and if it was recognised (by someone) then give it (to them), otherwise it is yours.’ No body recognised it, so he met him the next year and mentioned it to him. Umar said, ‘It is yours, for the Messenger of Allah ﷺ ordered us to do that.’ He said, ‘I do not want it.’ Umar took it and put it in the *Bayt Al-Mal*.” Al-Darimi and Ibn Abi Shaybah narrated from ‘Abd Allah b. Amr who said: “A servant passed away at the time of Uthman without having a relative. So, he ordered that his wealth be put in *Bayt Al-Mal*.” Ibn ‘Abd Al-Barr narrated in *Al-Istidhkar* from Anas Ibn Sirin “Ali used to divide the funds until the *Bayt Al-Mal* became empty, then he would wash it and sit inside.”

This is in regards to the first meaning of *Bayt Al-Mal*, which is the place. With regards to the second meaning, which is the responsible authority, this is necessitated by the fact that the funds are sometimes not kept in a place, such as the lands, oil wells, gas wells, mines, and the charity funds that are taken from the wealth and paid to its deserving people without being kept in a place. The *Bayt Al-Mal* is sometimes used to mean the responsible authority as narrated by Al-Bayhaqi in *Sunan*, Ahmad in *Al-Musnad*, and ‘Abd Al-Razzaq in His *Musannaf*, from Lahiq Ibn Hameed ***“Ibn Mas’ood was sent to preside over the judiciary and Bayt Al-Mal.”*** It would not mean that Umar (ra) sent him as a doorman to the *Bayt Al-Mal*, but rather he meant that he was responsible to collect and spend the funds. This is the same meaning as narrated by Ibn Al-Mubarak in *Al-Zuhd* from Al-Hasan, when the leaders of Basra came with Abu Musa Al-Ash‘ari and requested him to assign food for them. He said, in concluding his words to them: ‘O Leaders! I have assigned two sheep and two patches of arable land to you from the *Bayt Al-Mal*’; thus it can mean the responsible authority.

The one that disposes of the revenues and deals with the expenses of *Bayt Al-Mal* is the *Khalifah*.

The Messenger of Allah ﷺ was the one that received the donations of ‘Uthman (ra) to the army of hardship (‘*Usrah*) in his lap. Ahmad narrated and Al-Tirmidhi reported a narration - they considered it to be *Hasan Gharib*, and Al-Hakim authenticated it and Al-Dhahabi agreed with him - from ‘Abd al Rahman b. Samrah that he said:

(جاء عُثْمَانُ بْنُ عَفَّانَ إِلَى النَّبِيِّ ﷺ بِأَلْفِ دِينَارٍ فِي ثَوْبِهِ حِينَ جَهَّزَ النَّبِيُّ ﷺ جَيْشَ الْعُسْرَةِ قَالَ فَصَبَّهَا فِي حِجْرِ النَّبِيِّ ﷺ فَجَعَلَ النَّبِيُّ ﷺ يُقَلِّبُهَا بِيَدِهِ وَيَقُولُ: «مَا ضَرَّ ابْنَ عَفَّانَ مَا عَمِلَ بَعْدَ الْيَوْمِ» يُرَدِّدُهَا مِرَارًا)

“Uthman came to the Prophet ﷺ with one thousand dinars when he prepared the Army of the Hardship (Tabuk) and he emptied it in the lap of the Prophet ﷺ. He said the Prophet ﷺ started to turn them around and say: ‘Uthman will not be harmed by any work he does after today, and he repeated it many times’”. He ﷺ used sometimes to divide them by himself. Al-Bukhari narrated from Anas:

«أَتَى النَّبِيُّ ﷺ بِمَالٍ مِنَ الْبَحْرَيْنِ فَقَالَ: انْشُرُوهُ فِي الْمَسْجِدِ ... فَلَمَّا قَضَى الصَّلَاةَ جَاءَ فَجَلَسَ إِلَيْهِ، فَمَا كَانَ يَرَى أَحَدًا إِلَّا أَعْطَاهُ ... فَمَا قَامَ رَسُولُ اللَّهِ ﷺ وَتَمَّ مِنْهَا دِرْهَمٌ»

“Funds from Bahrain were brought to the Prophet ﷺ. He said ‘spread them out in the mosque’. When he finished the prayer, he sat down close to them and left nobody he saw without giving him... when the Messenger of Allah ﷺ stood up, there was not a single dirham left with them”.

Abu Bakr (ra) took responsibility of dividing by himself the funds coming from Bahrain. Al-Bukhari narrated from Jabir who said:

(قَالَ رَسُولُ اللَّهِ ﷺ: «لَوْ قَدْ جَاءَنِي مَالُ الْبَحْرَيْنِ، لَقَدْ أُعْطَيْتُكَ هَكَذَا وَهَكَذَا وَهَكَذَا»، فَلَمْ يَجِئْ حَتَّى قُبِضَ النَّبِيُّ ﷺ، فَلَمَّا جَاءَ مَالُ الْبَحْرَيْنِ أَمَرَ أَبُو بَكْرٍ مُنَادِيًا فَنَادَى: مَنْ كَانَ لَهُ عِنْدَ رَسُولِ اللَّهِ ﷺ دَيْنٌ أَوْ عِدَّةٌ فَلْيَأْتِنَا، فَأَتَيْتُهُ فَقُلْتُ: إِنَّ رَسُولَ اللَّهِ ﷺ قَالَ: لِي كَذَا وَكَذَا، فَحَنَّا لِي ثَلَاثًا...)

“The Messenger of Allah ﷺ said: ‘If funds come from Bahrain, I will give you thus and thus and thus. When the Messenger of Allah ﷺ died and the funds came from Bahrain, Abu Bakr ordered somebody to call: Whoever has some debt or something with the Messenger of Allah ﷺ let him come to us. I went to him and said: the Messenger of Allah ﷺ said: ‘for me is thus and thus, so he gave me (of money) three times...’”

In the narration mentioned above of Sufyan Al-Thaqafi regarding the leather bag which he found and announced to Umar (ra): “Umar took it and put it in the *Bayt Al-Mal*”. Al-Shafi‘i reported in *Al-Umm* “More than one of the scholars told us that when the spoils of Iraq reached Umar Ibn Al-Khattab, the trustee of the *Bayt Al-Mal* told him, ‘let me put them in the *Bayt Al-Mal*’. He said: ‘No! By the Lord of the Ka’bah, it will not be kept in any house until I have divided it.’ So he ordered it should be put in the mosque, and leather mats were put on top of it and men from the Muhajir and Al-Ansar guarded it. In the morning, Al-‘Abbas b. ‘Abd Al-Muttalib and ‘Abd Al-Rahman b. ‘Awf went out with him, he was either holding the hand of one of them, or one of them was holding his hand. When they saw him, they removed the leather mats away from the funds. So, he saw a scene he never saw before. He saw the gold, sapphire, crystals, and pearl sparkling and he cried. One of them said to him, ‘By Allah! This is not a day of crying, rather a day of praising and delight.’ He said ‘By Allah! I did not think of it your way. Rather, such funds will not increase in any people except their harm falls between them.’ Then he turned to the Qiblah, rose up his hands and said,

‘O my Lord! I seek protection with you from being allured, for I hear You (swt) saying:

﴿سَنَسْتَدْرِجُهُمْ مِّنْ حَيْثُ لَا يَعْلَمُونَ﴾

“But those who deny Our signs - We will progressively lead them [to destruction] from where they do not know.” (TMQ 7:183). Then he said, ‘Where is Suraqah Ibn Ja’sham?’ He was brought to him while his arms were hairy and slim. He gave him the two bracelets of Kisra. He said, ‘Wear them’ and he did. He then said, ‘Allah is great.’ He said, ‘Allah is Great’ He said, ‘Say all Praise is to Allah, who wrested them from Kisra Ibn Hirmiz and dressed Suraqah b. Ja’sham with them, a Bedouin from Bani Midlij.’ He started to turn over the funds with a stick and said, ‘Indeed the one that rendered that is honest.’ A man said to him, ‘Let me tell you, you are the trustee of Allah (ameen), and they render to you that which you rendered to Allah. So, if you reveled they would revel.’ He said, ‘You said the truth.’ then he distributed it”. We mentioned before also the narration of ‘Abd Allah b. Amr as reported by Al-Darimi “A servant passed away at the time of Uthman without having a relative. So, he ordered that his wealth be put in *Bayt Al-Mal*”. This is aside from the narration of Anas Ibn Sirin in *Al-Istidhkar* that “Ali used to divide the funds until the Bayt Al-Mal became empty, then he would wash it and sit inside (on the floor).”

The Messenger of Allah ﷺ would sometimes appoint one of his ﷺ companions to preside over the division of the funds, or he ﷺ used to appoint him over some of the issues of the funds. Al-Bukhari reported a narration from ‘Uqbah that the Messenger of Allah ﷺ said:

«ذَكَرْتُ شَيْئًا مِّنْ تَبَرِّ عِنْدَنَا، فَكَرِهْتُ أَنْ يَحْسِنِي، فَأَمَرْتُ بِقِسْمَتِهِ»

“I remembered a piece of gold Lying in my house and I did not like it to divert my attention from Allah's worship, so I have ordered it to be distributed (in charity).”The narration of

Ibn Shihab, as reported by Ibn Abi Shaybah through a narration considered *Hasan* by Al-Hafiz Ibn Hajar Al-‘Asqalani, Al-Mundhiri and Al-Haythami says:

«أَنَّ رَسُولَ اللَّهِ ﷺ دَخَلَ خِزَانَةَ بِلَالٍ الَّتِي يَضَعُ فِيهَا الصَّدَقَاتِ، فَوَجَدَ فِيهَا صُبْرَةً مِنْ تَمْرٍ، فَقَالَ: مَا هَذَا التَّمْرُ يَا بِلَالُ؟ قَالَ: يَا رَسُولَ اللَّهِ، أَخَذْتُهَا لِنَوَائِيكَ. قَالَ: أَفَأَمِنْتَ أَنْ تُصْبِحَ وَلَهَا فِي جَهَنَّمَ بُخَارٌ؟ أَنْفَقَ وَلَا تَخْشَ مِنْ ذِي الْعَرْشِ إِقْلَالًا أَوْ إِفْتَارًا»

“The Messenger of Allah entered the safe of Bilal in which he put the Sadaqah (charity) and found in it a heap of dates, so he said, ‘What are these dates, O Bilal?’ He said ‘O Messenger of Allah, I took it for your hard times.’ He said, ‘Do you feel safe from waking up and finding it fume in Hell? Spend and do not fear reduction or stinginess from the Owner of the Throne.’” And also in the narration: “Abd al Rahman b. ‘Awf used to take charge of the Sadaqah of camels and sheep at the time of the Messenger of Allah ﷺ, and Bilal used to take charge of the Sadaqah of fruits; while Mahmiyyah Ibn Juz’ used to take charge of the fifth (of the Messenger of Allah and his household)”. And Khalifah said: “And Bilal was responsible for his expenses”.

Ibn Hibban reported in his *Sahih* from ‘Abd Allah b. Lahya Al-Huzani, who said: “I met with Bilal, the *Mu’adhin* of the Messenger of Allah ﷺ and said, ‘O Bilal! How much were the expenses of the Messenger of Allah ﷺ?’ He replied, ‘He did not have anything. I was the one that took care of that since he was sent as a Messenger till the day he ﷺ passed away. If a Muslim came to him and he ﷺ saw him not dressed he ordered me to rush and borrow some money so as to buy him a cloak to dress him and also feed him’”. Muslim reported from Abu Rafi‘, the servant of the Messenger of Allah ﷺ, who said:

«أَنَّ رَسُولَ اللَّهِ ﷺ اسْتَسْلَفَ مِنْ رَجُلٍ بَكْرًا، فَقَدِمَتْ عَلَيْهِ إِبِلٌ مِنْ إِبِلِ الصَّدَقَةِ، فَأَمَرَ أَبَا رَافِعٍ أَنْ يَقْضِيَ الرَّجُلَ بَكْرَهُ، فَرَجَعَ إِلَيْهِ أَبُو رَافِعٍ فَقَالَ: لَمْ أَجِدْ فِيهَا إِلَّا خَيْارًا رَبَاعِيًّا، فَقَالَ: أَعْطِهِ إِيَّاهُ، إِنَّ خِيَارَ النَّاسِ أَحْسَنُهُمْ قَضَاءً»

“The Messenger of Allah ﷺ borrowed a young camel. Then he received some camels of the Sadaqah. He ordered Abu Rafi’ to repay the man his young camel. I said: I did not find in the camels except a four year old good camel. The Messenger of Allah ﷺ said: give it to him, for the best people are those who are best in repayment”.

It is also mentioned in the narration of Ibn Abbas, which is agreed upon: That when the Messenger of Allah ﷺ sent Mu’adh to Yemen, he ﷺ said:

«قَالَ رَسُولُ اللَّهِ ﷺ لِمُعَاذِ بْنِ جَبَلٍ حِينَ بَعَثَهُ إِلَى الْيَمَنِ: ... فَإِنْ هُمْ أَطَاعُوا لَكَ بِذَلِكَ، فَأَخْبِرْهُمْ أَنَّ اللَّهَ قَدْ فَرَضَ عَلَيْهِمْ صَدَقَةً تُؤْخَذُ مِنْ أَغْنِيَائِهِمْ فَتُرَدُّ عَلَى فُقَرَائِهِمْ، فَإِنْ هُمْ أَطَاعُوا لَكَ بِذَلِكَ، فَإِيَّاكَ وَكَرَائِمَ أَمْوَالِهِمْ، وَاتَّقِ دَعْوَةَ الْمَظْلُومِ فَإِنَّهُ لَيْسَ بَيْنَهُ وَبَيْنَ اللَّهِ حِجَابٌ»

“And if they obey you in that, tell them that Allah has enjoined on them five prayers in each day and night. And if they obey you in that tell them that Allah has made it obligatory on them to pay the Zakat which will be taken from the rich among them and given to the poor among them. If they obey you in that, then avoid taking the best of their possessions, and be afraid of the invocation of an oppressed person because there is no screen between his invocation and Allah”. It is also reported in Muslim from Abu Hurayrah

«بَعَثَ رَسُولُ اللَّهِ ﷺ عُمَرَ عَلَى الصَّدَقَةِ»

“that the Messenger of Allah ﷺ sent Umar to collect the Sadaqah”.

The Righteous *Khulafaa*’ followed him ﷺ in his ﷺ method, so they used to appoint some other people to run the affairs of funds. Ibn Ishaq and Khalifah said: “Abu Bakr appointed Abu ‘Ubaydah b. Al-Jarrah in charge of Bayt Al-Mal, and then he sent him to Al-Sham”. Al-Dhahabi said commenting on the life of Mu’ayyib that “Abu Bakr and Umar appointed him in charge of the *Bayt Al-Mal*”. In Ibn Kathir’s *Al-Bidayah wa ‘l-Nihayah* he mentioned from ‘Abd Allah b. Zubayr “The Messenger of Allah ﷺ used ‘Abd Allah b. Al-Arqam b. ‘Abdu Yaghuth as a scribe, and he used to reply to the Kings on his behalf, and it was mentioned that he used to order him to write to some of the Kings and would stamp what he read to him due to the trust he had with him, and he wrote to Abu Bakr and made him responsible for the *Bayt Al-Mal* and Umar b. Al-Khattab consented to that”. Ibn Sa’d narrated in *Al-Tabaqat* and Ibn Hajar in *Al-‘Isabah* that the treasurer of Umar (ra) was his servant Yasar Ibn Numayr. Ahmad in his *Musnad* and ‘Abd Al-Razzaq in *Al-Musannaf* reported from Lahiq b. Hamid that he said, “And he sent Ibn Mas‘ud in charge of judiciary and *Bayt Al-Mal*”, meaning to Kufa. Khalifah reported from Malik Ibn Anas from Zayd b. Aslam that “Umar appointed ‘Abd Allah b. Arqam in charge of the *Bayt Al-Mal*”. Ibn Khuzymah reported in his *Sahih* from ‘Urwah b. Al-Zubair that “‘Abd Al-Rahman b. ‘Abd Al-Qari said, ‘I was in charge of the *Bayt Al-Mal* at the time of Umar b. Al-Khattab”. Ibn Hajar narrated in *Al-Fateh* in the context of speaking about the virtues of ‘Abd Allah b. Mas‘ud: “And he was appointed by Umar and ‘Uthman in charge of the *Bayt Al-Mal* in Kufa”. Al-Jahshayari mentioned in *Al-Wuzara’ wa ‘l-Kuttab* “that ‘Abdullah b. Arqam Ibn ‘Abdu Yaghuth, one of the scribes of the Prophet, used to run the *Bayt Al-Mal* to him”, meaning to ‘Uthman (ra). Al-Hakim mentioned in *Al-Mustadrak* from Al-Zubayr Ibn Bakkar that, “*Abdullah Ibn Al-Arqam Ibn Abdu Yaghuth was in charge of Bayt Al-Mal at the time of Umar and the beginning of the authority of Uthman till he passed away; and he had some companionship (with the Messenger)*”. Ibn ‘Abd Al-Barr said in *Al-Isti‘ab*: “Zaid Ibn Thabit was in charge of the *Bayt*

Al-Mal during the *Khilafah* of Uthman; Zaid used to have a slave called Wahib, Uthman saw him helping them in the *Bayt Al-Mal*, so he said: ‘Who is this?’ Zayd replied, ‘A slave to me.’ Uthman said, ‘I see that he helps the Muslims, and he is entitled for a right, and I allocate it to him.’ So he allocated to him two thousand. Zayd said, ‘By Allah, you cannot allocate two thousand to a slave’, so he allocated to him one thousand”. Al-Sadfi mentioned in the book about the scholars of Egypt and the companions of the Messenger of Allah ﷺ who entered it: “Abu Rafi‘ was referred after that to ‘Ali b. Abi Talib, so he put him in charge of *Bayt Al-Mal* in Al-Kufa”. Ibn ‘Abd Al-Barr said in *Al-Isti’ab*: “‘Ubayd Allah b. Abu Rafi‘ was a treasurer and secretary to ‘Ali”. Al-‘Ayni mentioned in *‘Umdat Al-Qari’*: “‘Abd Allah b. Wahb Al-Suwa’i, ‘Ali used to honour him, love him and trust him, so he was put in charge of *Bayt Al-Mal* in Kufa”. ‘Ali appointed Ziyad in charge of Basra. Al-Jahshiyari said: “When he left Basra, he placed him in charge of *Al-Kharaj* and *Diwan*”.

The treasury (*Bayt Al-Mal*) can be divided into two parts:

Revenues: It includes three registers (*Diwan*):

- **The register of the booty and *Kharaj*:** This includes the spoils of war, *Kharaj*, lands, *Jizya*, booties and taxes.
- **The register of the public property:** This includes oil, gas, electricity, minerals, seas, rivers, lakes, springs, forests, pastures and *Hima* (protected lands).
- **The register of *Sadaqah*:** This includes *Zakah* of money, merchandise, harvest and fruits, camels, cows and sheep.

Expenditure: This includes eight registers:

- **The register of the *Dar Al-Khilafah*.**
- **The register of the State’s services.**
- **The register of grants.**

- The register of Jihad.
- The register of expenses of *Sadaqah*.
- The register of expenses of public property.
- The register of emergency.
- The register of general budget, general accounting and general inspection.

The Media

Article 103

The institution of the Media Office is responsible for drawing up and executing the political media strategy for the State in order to support the interests of Islam and the Muslims. Internally, it works to build an Islamic society that is strong and cohesive, and it refutes that which is malicious while confirming that which is good. In external affairs it is to promote Islam during peace and war, in a manner that explains the greatness of Islam, its justice and the strength of its army, and expose the corruption and oppression of manmade system and the weakness of its army.

Media is one of the important matters for the call to Islam (*Da'wah*) and the State. It is not one of the interests of the people that are under the authority of the department of peoples' affairs. Rather, it is directly connected to the *Khalifah* as an independent institution, just like any of the institutions of the State.

The presence of a distinguished media policy that presents Islam strongly and effectively would provoke the minds of the people to turn toward Islam, to study it and to think about it. It also facilitates the annexation of Islamic lands to the *Khilafah* State. Furthermore, there are many issues of media which are closely related to the State and they cannot be published without the *Khalifah's* instruction. This is manifested in the military matters and related issues, such as the movement of the armies, and the news of victory and defeat and the military industries. This type of news must be linked directly to the *Imam* so he can decide which news has to be concealed and which news must be announced and advertised.

The evidence for this is the Book and the *Sunnah*.

With regards to the Book, His (swt) saying:

﴿وَإِذَا جَاءَهُمْ أَمْرٌ مِّنَ الْأَمْنِ أَوْ أَلْخَوْفِ أَذَاعُوا بِهِ ۖ وَلَوْ رَدُّوهُ إِلَى
الرَّسُولِ وَالْيَ ٢ أُولَى الْأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنْبِطُونَهُ مِنْهُمْ ۚ﴾

“And when there comes to them information about [public] security or fear, they spread it around. But if they had referred it back to the Messenger or to those of authority among them, then the ones who [can] draw correct conclusions from it would have known about it.” (TMQ 4:83) - the subject of the verse is the news.

With regards to the *Sunnah* it is the narration of Ibn ‘Abbas about the conquest of Makkah as is reported by Al-Hakim in *Al-Mustadrak*, described as authentic based on the condition of Muslim, and Al-Dhahabi confirmed that. The narration mentions:

«وَقَدْ غَمِيتِ الْأَخْبَارُ عَلَى قُرَيْشٍ، فَلَا يَأْتِيهِمْ خَبَرُ رَسُولِ اللَّهِ ﷺ وَلَا يَذْرُؤْنَ
مَا هُوَ صَانِعٌ»

“The news was obscured from Quraysh; so the news of the Messenger of Allah ﷺ would not reach them, and nor would they know what he is planning regarding them”. There is also the *Mursal* (narration not directly connected to the Messenger ﷺ rather the name of a companion is missing) of Abu Salamah as reported by Ibn Abi Shaybah, which mentions: “Then the Prophet ﷺ said to 'Aisha:

جَهِّزِي وَلَا تُعْلِمِي بِذَلِكَ أَحَدًا، ... ثُمَّ أَمَرَ بِالطُّرُقِ فَحُبِسَتْ، فَعَمِيَ عَلَى أَهْلِ
مَكَّةَ لَا يَأْتِيهِمْ خَبَرٌ

‘Prepare me, and do not tell anyone about it...and then he commanded that the highways be obstructed, and so the

people of Makkah were kept in the dark and no news reached them.’”

There is also the narration of Ka’b which is agreed upon regarding the Battle of Tabuk (the expedition of Hardship) which says:

«وَمَ يَكُنْ رَسُولُ اللَّهِ ﷺ يُرِيدُ غَزْوَهُ إِلَّا وَرَى بِغَيْرِهَا، حَتَّى كَانَتْ تِلْكَ الْغَزْوَةُ غَزَاهَا رَسُولُ اللَّهِ ﷺ فِي حَرٍّ شَدِيدٍ، وَاسْتَقْبَلَ سَفَرًا بَعِيدًا وَمَقَارًا وَعَدُوًّا كَثِيرًا، فَجَلَّى لِلْمُسْلِمِينَ أَمْرَهُمْ لِيَتَأَهَّبُوا أَهْبَةً غَزْوِهِمْ، فَأَخْبَرَهُمْ بِوَجْهِهِ الَّذِي يُرِيدُ»

“The Messenger of Allah ﷺ never intended an expedition without alluding to something else, until he made during a very hot weather, a distant place, a desert and a huge enemy. So, he explained to the Muslims their matter to be ready for their raid, and he thus informed them of the destination he wants.”

There is also the narration of Anas as reported by Al-Bukhari

«أَنَّ النَّبِيَّ ﷺ نَعَى زَيْدًا وَجَعْفَرًا وَابْنَ رَوَاحَةَ لِلنَّاسِ قَبْلَ أَنْ يَأْتِيَهُمْ خَبَرُهُمْ فَقَالَ: أَخَذَ الرَّايَةَ زَيْدٌ فَأُصِيبَ، ثُمَّ أَخَذَ جَعْفَرٌ فَأُصِيبَ، ثُمَّ أَخَذَ ابْنُ رَوَاحَةَ فَأُصِيبَ، وَعَيْنَاهُ تَذْرِفَانِ، حَتَّى أَخَذَ سَيْفٌ مِنْ سُيُوفِ اللَّهِ حَتَّى فَتَحَ اللَّهُ عَلَيْهِمْ»

“The Prophet ﷺ announced the death of Zayd, Ja’far and Ibn Ruwaha before the news of their death reached him. He said: Zayd took the flag but he was killed, then Ja’far took it and he was killed, then Ibn Ruwahah took it and he was killed; he said that while he was crying. Lastly one of the swords of Allah took it till Allah granted them victory.”

Some of the applications of this rule at the time of the Righteous *Khulafaa*’ is that which is narrated by Ibn Al-Mubarak in the subject of *Jihad*; Al-Hakim reported in *Al-Mustadrak* - and he considered it authentic based on the condition of Muslim,

which Al-Dhahabi confirmed - from Zayd b. Aslam from his father from Umar b. Al-Khattab (ra) “that he was informed that ‘Abu ‘Ubaydah was surrounded and the enemy rallied against him. So, Umar wrote to him, ‘Peace is upon you. After that, there is not any difficulty that befalls a believer except Allah made for him a way out of it; and never a hardship would defeat two eases.’

﴿يَتَأْتِيهَا الَّذِينَ ءَامَنُوا أَصْبِرُوا وَصَابِرُوا وَرَابِطُوا وَاتَّقُوا اللَّهَ لَعَلَّكُمْ

تُفْلِحُونَ ﴿٣٠﴾

“O you who have believed, persevere and endure and remain stationed and fear Allah that you may be successful.” (TMQ 3:200) He said: Abu ‘Ubaydah wrote to him, “Peace is upon you, after that Allah says in His Book:

﴿أَعْلَمُوا أَنَّمَا الْحَيَاةُ الدُّنْيَا لَعِبٌ وَهُوَ زِينَةٌ وَتَفَاخُرٌ بَيْنَكُمْ وَتَكَاثُرٌ فِي

الْأَمْوَالِ وَالْأَوْلَادِ ﴿٣١﴾

“Know that the life of this world is but amusement and diversion and adornment and boasting to one another and competition in increase of wealth and children .” (TMQ 57: 20). He said, then Umar went out holding his letter, sat on the pulpit and read it to the people of Madinah and said, “O people of Madinah! Abu ‘Ubaydah expresses to you that you should show interest in Jihad.”

There are other types of news which have no direct connection to the State, and do not require the direct opinion of the *Khalifah*, such as the daily news, the political, cultural, and scientific programmes, and the international affairs. Though these may interfere with the viewpoint of life in some parts, and with the view of the State towards international relations, but despite that the type of State control over them differs from the first type of news.

Accordingly the media institution must contain two main departments:

The first: Its task is related to news that has connection with the State, such as the military matters, the military industry and international relations, and so on.

The task of this department is the direct supervision of such news. So, such news is not broadcasted in the state media or the special sources of media except after their presentation to the institute of media.

The second: is related to other news; and its supervision of them is not direct. Both state and private media do not need any permission for presenting such news.

Article 104

The media owned by any citizen of the State does not require a permit; rather they are simply required to inform the media office, such that the office knows about the media means that are being established. The owner and the editors of any media means are responsible for every article they publish and are accounted for anything which contradicts the *Shari'ah* in the same manner as any other citizen.

Sources of media do not require any permission for work. Rather, every citizen in the Islamic State is allowed to set up a source of media, whether written, audio or visual. He must only inform the media institution about the media outlet he wishes to establish.

He also needs permission for publishing the news connected with the State, as mentioned above. With regards to the other news, he can publish it without prior permission.

In all cases, the owner of the media outlet is responsible for the information he publishes, and he will be accounted for any violation of the *Shari'ah* like any other citizen.

The *Ummah* Council (The Consultation (*Shura*) and Accounting (*muhasabah*))

Article 105

The individuals who represent the Muslims' views to the *Khalifah* are the *Ummah* Council, and the individuals who represent the people in the provinces are the Provincial Councils. It is permitted for non-Muslims to be members in the *Shura* council for the sake of raising any complaints against any oppression by the rulers or misapplication of the laws of Islam.

This is a Council formed by individuals representing the opinion of the Muslims at large, to which the *Khalifah* can refer to, in order to consult on various issues. They in turn are the representatives of the *Ummah* in holding the rulers accountable. This is deduced from the Messenger of Allah's ﷺ consultation with some men from the Ansar and the emigrants who represented their people. It is also derived from the Messenger's ﷺ assigning some of his companions for consultation (*Shura*). He used to refer to them more than others for seeking opinion, such as Abu Bakr (ra), Umar (ra), Hamza (ra), 'Ali (ra), Salman Al-Farisi (ra), Hudhayfah (ra)....

It is also deduced from the fact that Abu Bakr (ra) designated some men from the Muhajir and the Ansar for seeking their opinion when something happened. The people of the consultation (*Shura*) at the time of Abu Bakr (ra) were the scholars and the people capable of giving legal edicts. Ibn Sa'ad reported from Al-Qasim:

«أن أبا بكر الصديق كان إذا نزل به أمر يريد مشاورة أهل الرأي وأهل الفقه فيه، دعا رجالاً من المهاجرين والأنصار، دعا عمر، وعثمان، وعلياً، وعبد الرحمن بن

عوف، ومعاذ بن جبل، وأبي بن كعب، وزيد بن ثابت، وكل هؤلاء كان يُفتي في خلافة أبي بكر، وإنما تصير فتوى الناس إلى هؤلاء، فمضى أبو بكر على ذلك، ثم ولي عمر فكان يدعو هؤلاء النَّفَر»

“when something happened and Abu Bakr wanted to consult the people of opinion and the people of jurisprudence, he called from the emigrants and the Ansar. Umar, ‘Uthman, ‘Ali, ‘Abd Al-Rahman b. ‘Awf, Mu’adh b Jabal, ‘Ubay b. Ka’b and Zayd Bin Thabit. They all used to give their opinion during the Khilafah of Abu Bakr. People would also take their legal edicts (fatwa) from them. When Umar became Khalifah, he also called these people”. There are also evidences that call upon the Muslims to account the rulers. Muslims exercised such accounting as happened at the time of the Righteous *Khulafaa*. As the *Ummah* is allowed to be represented in consultation (*Shura*), she is also allowed to be represented in accounting. All of this indicates that it is allowed to have a special council that represents the *Ummah* in accounting and in the consultation that is established by the text of the Quran and *Sunnah*. It is called the *Ummah* Council because it represents the *Ummah* in consultation and accounting.

It is permitted for non-Muslim citizens to be members of the Council, in order to file complaints against any injustice perpetrated against them by the rulers or against any misimplementation of Islam upon them or the lack of services to them or the like.

Article 106

The members of the Provincial Councils are directly elected by the people in their provinces, and the number of members of any Provincial Councils is decided according to the ratio of the inhabitants in such province to the whole population of the State. The members of the *Ummah* Council are elected

directly by the Provincial Councils. The start and end of the terms of the *Ummah* Council are the same as those of the Provincial Councils.

The members of the *Ummah* Council are elected and not appointed. They are representatives of the people to voice the opinions of the public and the representative should be chosen by the person whom he represents and should never be imposed upon him. Furthermore, the members of the *Ummah* Council are representatives of the people's opinions, whether they are individuals or groups; so to know the representative of people in a large area, and those peoples who are not well known, does not come about unless this representative is chosen by them. Also, the Messenger of Allah ﷺ did not choose those whom he consulted based on their ability, competence and personalities; rather he chose them because they were chiefs among their people, regardless of their ability and competence; in the second *Bay'a* of Al-'Aqabah, the Muslims who gave him the *Bay'a* were not known to him and this is why he left the matter of choosing the chiefs to them, by saying:

«أَخْرِجُوا إِلَيَّ مِنْكُمْ اثْنَيْ عَشَرَ نَقِيْبًا يَكُونُونَ عَلَى قَوْمِهِمْ»

“Choose from among you twelve leaders (Naqibs) who will be responsible for themselves and their people” (as reported in the *Sirah* of Ibn Hisham from Ka'b b. Malik).

We can thus conclude from the fact that the members of the *Ummah* Council represent the opinion of the Muslims at large, and since the reason (*'Illah*) for which the Council is founded is to represent the individuals and groups in voicing their opinions and in holding the rulers accountable, and since this cannot be achieved if the persons were not known (to the *Khalifah*) unless there was a general election, all of this proves that the members of the *Ummah* Council should be elected and not appointed.

The method of election is as follows:

1. In accordance with Article 56, a Provincial Council is elected for two goals: The first is to provide necessary information to the governor (*Wali*) about the situation and needs of the province (*Wilayah*). The purpose of that is helping the governor in conducting his task in a way that provides a comfortable and secure life for the people of the province and facilitates the fulfillment of their needs and the provision of their services. The second is to express contentment or complaint about the governance of the governor over them. This is because the complaint of the majority of the council of the province against the governor obliges his removal. This means the reality of the Provincial Council is administrative for helping the governor by informing him of the reality of the province and for expressing the contentment or complaint about him. All of this motivates him to improve his work. This council has other mandatory powers such as those of the *Ummah* Council, as explained below.

2. In accordance with Article 105 and the previous explanation, an *Ummah* Council is set up (for consultation and accounting), which must be elected by the *Ummah* and representative of her. It has mandatory powers which will be explained in the next article.

3. This means there will be election for selecting the members of the Provincial Council and another election for the members of the *Ummah* Council.

4. To facilitate the election process and save the citizens from repeated elections, we adopt the election of the Provincial Councils first, then those who won in the Provincial Councils would gather and elect from among themselves the *Ummah* Council. This means the Provincial Council would be directly elected by the *Ummah*, while the *Ummah* Council would be elected by the Provincial Councils. Hence, the beginning and end of the term of the *Ummah* council is the same as that of the Provincial Councils.

5. One that is elected from the Provincial Councils to the *Ummah* Council is replaced by the one with the highest votes among those

who failed in the elections of the Provincial Councils. A lot is cast between those who got the same number of votes.

6. The people of the *Dhimmah* elect their representatives in the Provincial Councils and these representatives elect their representatives in the *Ummah* Council. All of this takes place at the same time of the election of the Provincial Councils and the *Ummah* Council in the State.

Consequently, a law has been prepared that takes into consideration the matters mentioned, and explains the measures used for the election of the Provincial Councils and the *Ummah* Council.

Article 107

Every citizen who is adult and sane, has the right to be a member of the *Ummah* Council or the Provincial Council, whether they are male, female, Muslim or non Muslim; the non-Muslim member is restricted to raising complaints regarding the oppression of the rulers or the misapplication of the laws of Islam.

Any Muslim who holds the citizenship of the State, provided he is mature and sane, has the right to be a member of the *Ummah* Council, irrespective of whether they were male or female. This is because the Council of the *Ummah* has no mandate to rule and it does not come under the narration that prevents the woman from becoming a ruler. It is rather within the issue of consultation (*Shura*) and accounting, which is a right for both men and women. In the thirteenth year of the Messenger of Allah's ﷺ Prophethood, in other words, in the year he emigrated, there came to him ﷺ seventy-five Muslims, among whom were two women, and they all gave him the Second *Bay'a* of Al-'Aqaba, which was a *Bay'a* of war and fighting and a political *Bay'a*. Once they had all given their *Bay'a*, he said to all of them:

«أَخْرِجُوا إِلَيَّ مِنْكُمْ اثْنَيْ عَشَرَ نَقِيبًا يَكُونُونَ عَلَى قَوْمِهِمْ»

“Choose from among you twelve leaders (naqibs) who will be responsible for themselves and their people.” This is part of a long narration reported by Ahmad through Ka’b Bin Malik and it is an order from him ﷺ addressed to everyone, to elect from all who were present. He ﷺ did not specify the men nor exclude the women, neither in regard to who would select nor to who should be selected. The *mutlaq* (unrestricted) rule should be taken as such, unless there is evidence that restricts it; and the *‘Aam* (general) rule should also be taken as such, unless there is evidence that specifies it. In this case the speech was unrestricted and general. No evidence of specification or restriction has been reported, which indicates that the Messenger of Allah ﷺ ordered the two women to elect the *Naqibs*, and gave them the right to be chosen as *Naqibs* from among the Muslims.

The Messenger of Allah ﷺ sat once to take the *Bay’a* from the people, with Abu Bakr (ra) and Umar (ra) sitting with him, and both men and women gave him the *Bay’a*. This *Bay’a* was one for ruling, and not on Islam, for the women were already Muslims. After the *Bay’a* of the *Redhwan* in Hodaybiyah the women gave him their *Bay’a* too. Allah (swt) says:

﴿يَأْتِيهَا النَّبِيُّ إِذَا جَاءَكَ الْمُؤْمِنَاتُ يُبَايِعْنَكَ عَلَى أَنْ لَا يُشْرِكْنَ بِاللَّهِ شَيْئًا وَلَا يَسْرِقْنَ وَلَا يَزْنِينَ وَلَا يَقْتُلْنَ أَوْلَدَهُنَّ وَلَا يَأْتِينَ بِبُهْتَانٍ يَفْتَرِينَهُ بَيْنَ أَيْدِيْنَ وَأَرْجُلِهِنَّ وَلَا يَعْصِيَنَّكَ فِي مَعْرُوفٍ فَبَايِعْتَهُنَّ وَاسْتَغْفِرَ لهنَّ اللَّهُ ۖ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

“O Prophet, when the believing women come to you pledging to you that they will not associate anything with Allah, nor will they steal, nor will they commit unlawful sexual intercourse, nor will they kill their children, nor will

they bring forth a slander they have invented between their arms and legs, nor will they disobey you in what is right - then accept their pledge and ask forgiveness for them of Allah. Indeed, Allah is Forgiving and Merciful.” (TMQ 60:12)

This *Bay’a* was also a *Bay’a* on ruling, as the Quran states that the women were believers, and the *Bay’a* was that they would not disobey him in any good thing.

In addition to that, the woman has the right to represent and be represented in voicing an opinion. This is because she has the right to voice her opinion, so she can choose her representative; and moreover since deputyship does not necessitate being a man, she has the right to represent those who elect her.

It was also confirmed that our master Umar (ra) used to seek the opinion of the Muslims when a problem faced him, whether it related to the rules of the *Shari’ah* or governing or any of the actions of the State. When a problem faced him he used to call the Muslims to the mosque, and he used to call the men and women, and seek the opinion of all of them. He withdrew his opinion when a woman opposed him regarding limitation of the dowry.

Non-Muslims have the right, like the Muslims, to be represented in the Council of the *Ummah*, and to be representatives of their electorate in it, so as to express the opinion on their behalf regarding the misapplication of the rules of Islam upon them and the oppression of the ruler that might fall upon them. This is because Allah said

﴿فَسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾

“So ask the people of the message if you do not know.”
(TMQ 16:43).

However, non-Muslims would not be allowed to voice their opinion in matters related to legislation, because the Islamic

legislation emanates from the Islamic belief ('*Aqeedah*). It is a host of practical divine rules deduced from their elaborate evidences, which treat human problems according to a specific viewpoint outlined by the Islamic belief. The non-Muslim embraces a doctrine that is alien and contradictory to the Islamic '*Aqeedah* and his viewpoint about life contradicts the Islamic viewpoint and ,therefore, his opinion is not sought in matters of legislation.

The non-Muslim also does not have the right to elect the *Khalifah*, nor to participate in the short listing of the candidates from whom the *Khalifah* is to be elected, for he has no right in ruling. As for other matters that form part of the *Ummah* Council's mandatory powers, he is just like the Muslim in these matters and in voicing an opinion regarding them.

Article 108

***Shura* (consultation) and *Mashwarah* (deliberation) is the taking of opinion in its absolute meaning, and it is not binding in legislation, definitions, and nor intellectual issues such as disclosing facts, nor technical and scientific issues; and it is binding when the *Khalifah* consults in any operational issue and the actions that do not require research and deep examination.**

Shura is from the verb *shawara*, which is to seek opinion and consultation, and it is said I sought *Shura* from him – is to seek *Mashurah* for him.

Shura and *Mashurah* have the same meaning as *Mashwara*. In *Lisan Al- 'Arab* it mentioned: it is said So and so is good *Mashurah* and *Mashwarah*, in two dialects. Farraa' said: *Al-Mashura* comes from *Mashwarah*, and then it became *Mashura* for the sake of ease. And Al-Layth said: *Al-Mashwara* is on the form *Mafa'la* derived from *Al-isharah*, and it is said: *Mashura*,

which is *Shura* and *Mashura* and similarly *Mashwarah*, and you say ‘I did *Shura* with him in an issue, and I sought *Shura* from him’, and it is mentioned in *Mukhtar Al-Sihah: Al-Mashwarah* is *Al-Shura*, and also *Al-Mashurah*, we say from it ‘*Shaawarahu* (I did *Shura* with him) in an issue, and I sought *Shura* from him’, with the same meaning.

The origin of the legitimacy of *Al-Shura* is the order of Allah (swt) to His Messenger ﷺ to seek consultation with the Muslims when He (swt) said:

﴿وَشَاوِرْهُمْ فِي الْأَمْرِ﴾

“**And consult them in the matter.**” (TMQ 3:159), and this indicates a request, and the indication that came with this request, which are reported in the texts, indicates that this is a request for something recommended. These texts are:

1. Allah praises *Shura* through his praise of the believers, by making the issue of *Shura* linked to them:

﴿وَأَمْرُهُمْ شُورَى بَيْنَهُمْ﴾

“**And whose affair is [determined by] consultation among themselves.**” (TMQ 42:38).

2. The Messenger of Allah ﷺ would often consult (take *Shura*) from his companions in many issues, which indicates the extent of his ﷺ concern to do it and how he ﷺ considered it important and useful and to teach the Muslims after him ﷺ to be careful to undertake it. Al-Tirmidhi reported from Abu Hurayrah:

«مَا رَأَيْتُ أَحَدًا أَكْثَرَ مَشُورَةً لِأَصْحَابِهِ مِنْ رَسُولِ اللَّهِ ﷺ»

“**I did not see anyone who took *Shura* (*Mashura*) from his companions more than the Messenger of Allah ﷺ.**”

3. The order of Allah (swt) to His Messenger ﷺ to conduct *mashawara* (consultation) with the believers, when He (swt) ordered him ﷺ to be kind and remissive towards them, and to seek forgiveness for them, when He (swt) said:

﴿فَبِمَا رَحْمَةٍ مِّنَ اللَّهِ لِنْتَ لَهُمْ وَلَوْ كُنْتَ فَظًا غَلِيظَ الْقَلْبِ لَانفَضُّوا

مِّنْ حَوْلِكَ فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ﴾

“So by mercy from Allah, [O Muhammad], you were lenient with them. And if you had been rude [in speech] and harsh in heart, they would have disbanded from about you. So pardon them and ask forgiveness for them and consult them in the matter.” (TMQ 3:159).

Accordingly the origin of the rule of *Shura* (consultation) is that it is recommended.

However, when the *Khalifah* consults the *Ummah* Council, he must adhere to the opinion of the majority in practical affairs that do not require research and deep consideration, such as the internal affairs of the state linked to ruling, education, health, trade, industry, agriculture, and so on, and in the same manner when he is held accountable for actions which are being practically undertaken from these affairs and actions. This is derived from when the Messenger of Allah ﷺ left his ﷺ own opinion for the opinion of the majority in the issue of leaving Madinah to meet the army of the idol-worshippers in the battle of Uhud. This is despite the fact that the opinion of the Messenger ﷺ and the senior companions was to remain in Madinah and not to leave. It is also derived from his ﷺ words to Abu Bakr (ra) and Umar (ra)

«لَوْ اجْتَمَعْتُمَا فِي مَشُورَةٍ مَا خَالَفْتُكُمَا»

“If the two of you agree on an issue I consult you on (Mashura) I will not differ with you” (as reported by Ahmad with a *Hasan* chain from ‘Abd Al-Rahman Bin Ghanam Al-Ash’ari).

Whereas if the *Khalifah* consults the Council on anything else, such as consulting them on technical and conceptual issues that require research and deep consideration, or the affairs of war, insight and strategy, then the opinion of the majority is not binding and the *Khalifah* retains the right to make the decision. This is derived from the Messenger of Allah’s ﷺ acceptance of the opinion of Al-Hubab Bin Al-Munthir in specifying the place for the battle of Badr and not paying attention to the opinions of the companions; rather he ﷺ did not even consult them regarding it. And it is also based upon the rejection of the opinion of the companions by Abu Bakr (ra) in regards to not fighting the apostates and those who withheld their *Zakah* at the beginning of his *Khilafah*. In the same manner, when the Council holds the *Khalifah* accountable for an action that has already been practically carried out, the majority opinion is not binding.

Likewise, the opinion of the people is not sought regarding legislation, since the legislation is from Allah (swt) and not the people and consultation (*Shura*) in what Allah (swt) has legislated is only within the permitted (*Mubah*) issues, since in issues other than the *Mubah* there is no choice, rather it is compulsory to accept what is reported of obligations, recommended and disliked issues, or that which is prohibited. Therefore, the actions that there is consultation in are only those that fall under the permitted (*Mubah*) acts.

Article 109

***Shura* (consultation) is a right for the Muslims alone and the non-Muslims do not have a right to it. It is permitted for all of the subjects to put forward opinions, whether Muslim or not.**

The fact that *Shura* is a right for the Muslims is proven by the two verses

﴿وَشَاوِرْهُمْ فِي الْأَمْرِ﴾

“And consult them in the matter.” (TMQ 3:159) and

﴿وَأَمْرُهُمْ شُورَى بَيْنَهُمْ﴾

“And whose affair is [determined by] consultation among themselves.” (TMQ 42:38) with respect to the Muslims, and His (swt) words

﴿فَسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾

“So ask the people of the message if you do not know.” (TMQ 16:43) with respect to the non-Muslims. So Allah (swt) ordered the questioning of the People of the Book regarding whatever we do not know, and this is proof for the permissibility of taking their opinion, and if it is permissible to take their opinion it is permissible for them to be members of the *Shura* council.

Article 110

The issues which fall under consultation (*Shura*) are decided by the opinion of the majority without considering whether it is correct or incorrect. As for any other issues which fall under *Shura*, the correct opinion is sought without any consideration given to the majority or minority.

The evidence for this is the actions of the Messenger ﷺ, since in the Battle of Uhud he ﷺ took the opinion of the majority,

while in the Battle of Badr he ﷺ took the opinion of Al-Hubab Bin Al-Munthir and left his ﷺ own opinion, and did not refer to the opinion of the majority. In the Expedition of Hudaybiyah he ﷺ held onto his ﷺ own opinion alone and paid no attention to the opinions of Abu Bakr (ra) and Umar (ra). In fact, he ﷺ did not pay attention to the opinion of all the Muslims, and forced them to abide by his ﷺ opinion even though they hated it. So if these three actions are compared with the words of the Messenger ﷺ to Abu Bakr (ra) and Umar (ra),

«لَوْ اجْتَمَعْتُمَا فِي مَشُورَةٍ مَا خَالَفْتُكُمَا»

“If the two of you agree in Mashura I will not differ with you” (reported by Ahmad), and with the words of Allah (swt)

﴿وَشَاوِرْهُمْ فِي الْأَمْرِ﴾

“And consult them in the matter.” (TMQ 3:159) and

﴿وَأَمْرُهُمْ شُورَى بَيْنَهُمْ﴾

“And whose affair is [determined by] consultation among themselves.” (TMQ 42:38), then the explanation of the meaning of the two verses and the narration is that whatever is like the example of the situation of Al-Hudaybiyah, which is where the *Shari’ah* rule is apparent, then it is of the power of the *Khalifah* to act upon it, and *Shura* in the issue is not binding. Whatever is similar to the situation of Badr, where the issue requires insight and thought, or where the proposing of an opinion was in a specialist issue, then the correct opinion is sought without any consideration for whether it was the opinion of the majority or of a single person. And whatever is similar to the situation of Uhud, which is the opinion regarding actions, then the opinion of the majority is followed; this is what falls under the category of “*Mashurah*” and the meaning of the words of the Prophet (saw) to Abu Bakr (ra) and Umar (ra)

«لَوْ اجْتَمَعْتُمَا فِي مَشُورَةٍ مَا خَالَفْتُكُمَا»

“If the two of you agree on an issue I consult you on (Mashura) I will not differ with you” (reported by Ahmad).

Article 111

The *Ummah* Council has five powers which are:

1. (a): The *Khalifah* has to consult the Council and the Council has the right to advise him in operational matters and actions related to carrying out the affairs of the domestic policy that do not require deep intellectual research and serious examination, like matters of ruling, education, health, economy, trade, industry, agriculture and the like, and the opinion of the Council in these areas is binding.

(b): In the intellectual matters that require deep research and serious examination, and issues which require experience and knowledge, and technical and scientific issues, and similarly the financial issues, the army, and foreign policy, the *Khalifah* has the right to consult the Council about them and to acquaint himself with its opinion; however the opinion of the Council is not binding in these matters.

2. The *Khalifah* has the right to notify the Council of the laws and rules which he wants to adopt. The Muslim members of the Council have the right to debate them and voice their opinions regarding those rules. However, if they disagree with the *Khalifah* regarding the validity of their deduction or their evidence, in terms of their disagreement with the method of adoption from the basis of legislation (*Usul*) adopted in the State, then the decision will be referred to the Court of *Madhalim*, and its verdict in this matter is binding.

3. The *Council* has the right to hold the *Khalifah* accountable for all matters that took place effectively within the State, whether these were related to domestic or foreign affairs, financial affairs, or military matters. The opinion of the Council is binding if the majority's opinion in such matters is binding, and it is not binding if the majority's opinion in such matters is not binding.

If the Council and the *Khalifah* differed about the legitimacy of an action that had been already executed the matter should be referred to the Court of *Madhalim* to settle the question. Its verdict on the matter is binding.

4. The *Ummah* Council has the right to express discontent of the assistants, governors or the '*Amils*. Its opinion in such a case would be binding and the *Khalifah* should dismiss them at once. If the opinion of the *Ummah* Council differed from the opinion of the council of the concerned province regarding contentment and discontent of the governors and '*Amils*, the opinion of the council of the province overrides.

5. Muslim members of the Council have the right to restrict the nomination of candidates for the *Khilafah* from amongst those who fulfilled the qualification conditions as decided by the *Madhalim* Court. Their opinion in this is binding, and candidates other than those shortlisted by the Council should accordingly not be considered.

This article explains the powers of the *Ummah* Council. The evidences for these powers are as follows:

The first point, (a): The evidence for the fact that the opinion of the *Ummah* Council regarding practical actions and matters, which do not require research and deep consideration, is binding, is deduced from the Messenger of Allah's ﷺ compliance with the opinion of the majority in going out of Madinah to meet the army of the idol worshippers in the Battle of Uhud. This is despite the

opinion of the Messenger of Allah ﷺ and the senior companions to stay in Madinah and not to leave. It is also taken from his saying to Abu Bakr (ra) and Umar (ra):

«لَوْ اجْتَمَعْتُمَا فِي مَشُورَةٍ مَا خَالَفْتُكُمَا»

“If the two of you agree on an issue I consult you on (Mashura) I will not differ with you” (reported by Ahmad). Therefore, the practical matters related to the opinion leading to an action, in terms of providing services to the citizens for reassuring their livelihood, and in terms of maintaining their security, strengthening their defences and driving danger away from them; the majority opinion of the Council in all of these issues is binding upon the *Khalifah* even if it disagreed with his wish, which happened with the Messenger of Allah ﷺ going out to Uhud in compliance with the opinion of the majority.

The first point, (b): In principle, the *Khalifah* takes the opinion of the scholars, experts and specialists regarding the matters of this section. This is in accordance with what happened with the Messenger of Allah ﷺ when he ﷺ took the opinion of Al-Hubab b. Al-Mundhir, in selecting the location of the Battle of Badr. It was reported in the *Sirah* of Ibn Hisham:

«إِنَّهُ ﷺ، حِينَ نَزَلَ عِنْدَ أَذْنَى مَاءٍ مِنْ بَدْرٍ، لَمْ يَرْضَ الْحَبَابُ بْنُ الْمُنْذِرِ بِهَذَا الْمَنْزِلِ، وَقَالَ لِلرَّسُولِ ﷺ: يَا رَسُولَ اللَّهِ، أَرَأَيْتَ هَذَا الْمَنْزِلَ، أَمَنْزِلًا أَنْزَلَكَ اللَّهُ لَيْسَ لَنَا أَنْ نَتَقَدَّمَهُ وَلَا نَتَأَخَّرَ عَنْهُ، أَمْ هُوَ الرَّأْيُ وَالْحَرْبُ وَالْمَكِيدَةُ؟ قَالَ: بَلْ هُوَ الرَّأْيُ وَالْحَرْبُ وَالْمَكِيدَةُ، فَقَالَ: يَا رَسُولَ اللَّهِ، فَإِنَّ هَذَا لَيْسَ بِمَنْزِلٍ، فَانْهَضَ بِالنَّاسِ حَتَّى نَأْتِيَ أَذْنَى مَاءٍ مِنَ الْقَوْمِ فَنَنْزِلُهُ، ثُمَّ نَعُورُ مَا وَرَاءَهُ مِنَ الْقَلْبِ، ثُمَّ نَبْنِي عَلَيْهِ حَوْضًا فَنَمْلُؤُهُ مَاءً، ثُمَّ نَقَاتِلُ الْقَوْمَ فَنَشْرِبُ وَلَا يَشْرَبُونَ، فَقَالَ رَسُولُ اللَّهِ ﷺ: لَقَدْ أَشْرَتَ بِالرَّأْيِ، فَانْهَضَ رَسُولُ اللَّهِ ﷺ وَمَنْ مَعَهُ مِنَ النَّاسِ، فَسَارَ حَتَّى إِذَا أَتَى أَذْنَى

مَاءٍ مِنَ الْقَوْمِ نَزَلَ عَلَيْهِ، ثُمَّ أَمَرَ بِالْقَلْبِ فَعُورَتْ، وَبَنَى حَوْضاً عَلَى الْقَلْبِ الَّذِي نَزَلَ عَلَيْهِ، فَمَلَأَ مَاءً، ثُمَّ قَذَفُوا فِيهِ الْإِنْيَةَ»

“When the Messenger ﷺ camped at the nearest side of the water of Badr, Al-Hubab b. Al-Mundhir was not content with that site. He said to the Messenger: “O Messenger of Allah! Did Allah make you camp in this place where we can’t depart from it, or is it opinion, war and strategy?” He ﷺ said: “It is rather opinion, war and strategy”. Hubab b. Al-Mundhir said: “O Messenger of Allah, this is not the (right) place. Move the people till we come to the side of the water near to the people (enemy); we camp there, then we seep away the water from the other part, we build a basin on top of it, we fill it with water. Then we fight against the people where we drink and they do not”. The Messenger of Allah ﷺ said: “You gave the (right) opinion”. So the Messenger of Allah ﷺ and the Muslims stood up and walked till they reached the near side of the water from the enemy and camped there. Then he ﷺ commanded that the water be seeped away which was done. He ﷺ built a basin on top of the seeped wells, filled it with water and threw pots in their (water).” So the Messenger of Allah ﷺ agreed with the opinion of Al-Hubab and followed it.

In this incident, which has to do with opinion, war and strategy, the views of the people have no weight in taking the decision. Rather the view of the expert is what is considered. Similar to this are technical matters and thoughts which require study and scrutiny, together with definitions. In all such matters, reference is made to the experts and specialists, rather than to the ordinary people’s opinion. There is no value in such matters with the majority, but rather weight is given to knowledge, experience, and specialisation.

This also applies to financial matters, because the *Shari’ah* has determined the types of funds which must be collected and the areas over which they need to be allocated (spent). The *Shari’ah*

has also determined the cases when taxes are imposed; ,therefore, there is no point in seeking the opinion of the people in the collection and allocation of funds. Similar to this is the army; the *Shari'ah* has left to the *Khalifah* the right of managing the army's affairs, and it determined the rules of *Jihad*. There is no validity in the opinion of the people over matters decided by the *Shari'ah*. This also applies to the relationship of the State with other States, because this is of the thought that requires study and deep insight and is related to *Jihad*. Furthermore, it is a part of opinion, war and strategy. Therefore, there is no point in the opinion of the people in this matter, whether it is the majority or minority. However, the *Khalifah* is allowed to present these matters to the *Ummah* Council for its consultation and opinion, because such presentation is from the permitted issues (*Mubah*) and the opinion of the Council in these matters is not binding as in the incident of Badr. Rather the decision is entrusted with the concerned person.

The following examples are to distinguish the difference between points (a) and (b):

For deciding the building of a bridge over a river to serve the interests of the people in a village, almost isolated in terms of communications and the like, then the majority opinion of the council on this matter is binding to the *Khalifah* in building the bridge to solve the communication problem of the village. As for deciding the right technical location for building the bridge, and the best engineering design of the bridge, whether it should be a suspension bridge or standing over pillars in the river, etc; the experts and specialist people are consulted in such matters, rather than the majority opinion of the council.

Likewise, building a school for the children of a village, where its children find great difficulty in reaching the schools in the towns, the majority opinion of the *Ummah* Council on this matter is binding to the *Khalifah*. In regards to the choice of the location of the school in the village in terms of the soil strength suitable for design, as well as the style of its building, whether is possessed by the State, i.e. whether it is built, bought or leased, in

such matters the experts and specialist people are consulted and the majority opinion of the council is not sought, though the *Khalifah* is allowed to consult with them over the matter, but their opinion is not binding.

As regarding a country at the frontiers, defying the danger of an enemy, then the majority opinion of the *Ummah* Council is binding in terms of the village's fortification and driving the danger of the enemy away from it, and preventing its exposure to killing and expulsion after any aggression from the enemy. However, the method of building such fortifications and any fighting means used to drive the danger away from it; such things need the consultation of the experts and specialist people, rather than the majority opinion of the council.

The second point: Legislation belongs to Allah (swt) alone. Allah (swt) says:

﴿إِنِ الْحُكْمُ إِلَّا لِلَّهِ ۖ﴾ [الأنعام ٥٧] ﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا﴾ [النساء]

" The decision is only for Allah." (TMQ 12: 40) " But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission ." (TMQ 4: 65)

In the explanation of the Messenger ﷺ to His (swt) saying:

﴿اتَّخِذُوا أَحْبَابَهُمْ وَرُهْبَنَهُمْ أَرْبَابًا مِّن دُونِ اللَّهِ﴾

“They have taken their scholars and monks as lords besides Allah.”, (TMQ 9:31), Al-Tirmidhi reported through ‘Adiyy b. Hatim who said:

«أَتَيْتُ النَّبِيَّ ﷺ وَفِي عُنُقِي صَلِيبٌ مِنْ ذَهَبٍ، فَقَالَ: يَا عَدِيُّ، اطْرَحْ عَنْكَ هَذَا الْوَتْنَ. وَسَمِعْتُهُ يَقْرَأُ فِي سُورَةِ بَرَاءةٍ ﴿اتَّخَذُوا أَحْبَارَهُمْ وَرُهَبَانَهُمْ أَرْبَابًا مِنْ دُونِ اللَّهِ﴾ قَالَ: أَمَا إِنَّهُمْ لَمْ يَكُونُوا يَعْبُدُونَهُمْ، وَلَكِنَّهُمْ كَانُوا إِذَا أَحَلُّوا لَهُمْ شَيْئًا اسْتَحْلَوْهُ وَإِذَا حَرَّمُوا عَلَيْهِمْ شَيْئًا حَرَّمُوهُ»

“I came to the Prophet ﷺ while wearing a cross of gold in my neck. He said: O Adiyy! Throw out this idol. And I heard him reading in chapter of Baraa’ah: “They have taken their scholars and monks as lords besides Allah.” (TMQ 9: 31). He ﷺ said: they did not worship them; but when they allowed them something, they took as Halal and when they forbade them of something, they prohibited it”.

Therefore, legislation is not taken from the opinion of the council, neither by consensus or majority. It is rather taken from the Book of Allah (swt) and the *Sunnah* of His Messenger ﷺ, and from that which is indicated by them through valid *Ijtihad*. Thus, the Messenger ﷺ refused the opinion of many Muslims regarding the Hudaybiyah peace treaty, and said:

«إِنِّي عَبْدُ اللَّهِ وَرَسُولُهُ، وَلَنْ أُخَالِفَ أَمْرَهُ»

“I am the servant of Allah and His Messenger, and will never disobey his order”. This is because the peace was a revelation from Allah (swt) and ,therefore, the opinion of the people is not sought regarding legislation. Based on that, the adoption of the *Shari’ah* rules, enacting of laws and the adoption of the rules and canons are of the mandatory powers of the *Khalifah* alone as explained before. It is all derived from the

Shari'ah texts, irrespective if it was from his *Ijtihad* or that of other respected *mujtahids*. However, it is allowed for the *Khalifah* to submit to the *Ummah* Council whatever he wants to adopt of *Shari'ah* laws and canons so as to find out its opinion regarding it. This is like what Umar bin Al-Khattab (ra) did when he referred to the Muslims over the divine rules, which the companions did not object to, as in the incident of the conquered lands of Iraq, when the Muslims asked him to divide the lands amongst the fighters who opened them. So Umar (ra) asked the people, but his opinion settled on keeping the land with its landlords on condition that they pay a known *Kharaj* over it in addition to paying the *Jizya* over their persons. The reference of Umar (ra) and Abu Bakr (ra) before him to the companions for their opinion over the divine rules without an objection from the companions to this, indicates their *Ijma'*. This serves as evidence that the *Khalifah* has the right to do that.

With regard to reference to the *Madhalim* Court in case the *Khalifah* differed with the *Ummah* Council regarding the validity of the deduction of these canons, or regarding their evidences or terms of the adoption from the sources (*usul*) adopted by the State, in this case the authority of the *Madhalim* judge is to examine the law adopted by the *Khalifah*, to determine whether it has a *Shari'ah* evidence and whether the evidence applies to the incident. Therefore, if the *Khalifah* differed with the Council (in other words, with the majority of the Council) over the law which the *Khalifah* adopted in terms of being a valid *Shari'ah* law or not, then this dispute is settled by the Judge of *Madhalim*, because it is from his specialty and the opinion of *Madhalim* Court is binding.

Non-Muslim members of the Council have no right in examining the laws and cannons which the *Khalifah* wants to adopt. This is because they do not believe in Islam, and because their right is restricted to voicing their concerns regarding any oppression that might fall upon them from the rulers, rather than expressing their view regarding the *Shari'ah* laws and cannons.

With regards to the third point, its evidence is the general meaning of the texts related to bringing the rulers to task. Ahmad narrated from Ibn Umar, who said: “The Messenger of Allah ﷺ said:

«سَيَكُونُ عَلَيْكُمْ أُمَرَاءُ يَأْمُرُونَكُم بِمَا لَا يَفْعَلُونَ، فَمَنْ صَدَّقَهُمْ بِكَذِبِهِمْ، وَأَعَانَهُمْ عَلَى ظُلْمِهِمْ، فَلَيْسَ مِنِّي وَلَسْتُ مِنْهُ، وَلَنْ يَرِدَ عَلَيَّ الْخَوْضَ»

“There will be Amirs over you who order you of things they do not do. Whoever believes their lies and helps them in their injustice will not belong to me and I do not belong to him, and he will not join me on the hawd (basin) in Jannah”. Ahmad narrated from Abu Sa‘id Al-Khudri, who said: “The Messenger of Allah ﷺ said:

«... أَلَا إِنَّ أَفْضَلَ الْجِهَادِ كَلِمَةُ حَقٍّ عِنْدَ سُلْطَانٍ جَائِرٍ»

“...The best of Jihad is (to say) a word of truth before an oppressive ruler”. Al-Hakim narrated from Jabir from the Prophet ﷺ who said:

«سَيِّدُ الشُّهَدَاءِ حَمْزَةُ بْنُ عَبْدِ الْمُطَّلِبِ، وَرَجُلٌ قَامَ إِلَى إِمَامٍ جَائِرٍ فَأَمَرَهُ وَنَهَاهُ فَقَتَلَهُ»

“The master of martyrs is Hamza bin ‘Abd Al-Muttalib and a man who stands up to an oppressive ruler where he orders him and forbids him, so he (the ruler) kills him.” Muslim narrated from Umm Salama that the Messenger of Allah ﷺ said:

«سَتَكُونُ أُمَرَاءُ فَتَعْرِفُونَ وَتُنْكِرُونَ، فَمَنْ عَرَفَ بَرِيٍّ وَمَنْ أَنْكَرَ سَلِمَ، وَلَكِنْ مَنْ رَضِيَ وَتَابَعَ...»

“There will be Amirs (rulers) and you will like their good deeds and dislike their bad deeds. One who sees through their deeds (and tries to prevent their repetition), is absolved from blame, and one who hates their bad deeds (in their hearts,

being unable to prevent their recurrence), is (also) safe. But one who approves of their bad deeds and imitates them is spiritually ruined". These texts are in general form and indicate holding to accounting the ruler in accordance with the rules of the *Shari'ah*. Furthermore accounting can be over any action. This holding to account by the Council of the *Khalifah* and other assistants, governors, and 'Amils would be over any action which has been actually executed whether this action disagreed with the *Shari'ah* rule, was wrong or harmful to Muslims, or was unjust or complacent toward the citizens in looking after their affairs. The *Khalifah* must respond to this accounting and the objections by showing his view and evidence regarding his words, actions, and tasks he undertook, so that the Council can be assured of a good performance, the sincerity, and honesty of the *Khalifah*. If, however, the Council does not accept the view of the *Khalifah* and rejects his argument, this must be examined. If this matter was of the issues over which the majority opinion is binding then the opinion of the Council is binding like the issues in (a), otherwise it would not be binding as in the issues in (b). If the accounting, for example, was regarding not providing the school in the previous example then the accounting is binding. If the accounting was regarding the design he chose for the school then his accounting is not binding.

If those who account differed with the rulers over any matter from the legal (*Shari'ah*) point of view, the matter is referred to the court of unjust acts (*Madhalim*) by a request from the Council, due to what Allah (swt) says:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ فَإِنْ

تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ﴾

“O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you

disagree over anything, refer it to Allah and the Messenger.”
(TMQ 4:59)

This means that if the Muslims dispute with the people of authority over a matter, they should refer it to Allah (swt) and to the Messenger ﷺ, that is to arbitrate from the *Shari'ah*. This means to refer to the Judiciary, that is to the court of unjust acts, and its opinion is binding because it has the power in this case.

In regards to the fourth point, its evidence is that the Messenger of Allah ﷺ removed Al-‘Ala’ b. Al-Hadrami, his ‘Amil over Bahrain, because the delegate of ‘Abd Al-Qays complained about him to the Messenger ﷺ. Ibn Sa’d narrated on the authority of Muhammad Bin Umar:

«أَنَّ رَسُولَ اللَّهِ ﷺ قَدْ كَتَبَ إِلَى الْعَلَاءِ بْنِ الْحَضْرَمِيِّ أَنْ يَقْدِمَ عَلَيْهِ بِعِشْرِينَ رَجُلًا مِنْ عَبْدِ الْقَيْسِ، فَقَدِمَ عَلَيْهِ بِعِشْرِينَ رَجُلًا رَأْسُهُمْ عَبْدُ اللَّهِ بْنُ عَوْفٍ الْأَشَجِّ، وَاسْتَخْلَفَ الْعَلَاءُ عَلَى الْبَحْرَيْنِ الْمُنْدِرَ بْنَ سَاوَى، فَشَكَا الْوَفْدُ الْعَلَاءَ بْنَ الْحَضْرَمِيِّ، فَعَزَلَهُ رَسُولُ اللَّهِ ﷺ وَوَلَّى أَبَانَ بْنَ سَعِيدٍ بْنِ الْعَاصِ، وَقَالَ لَهُ: اسْتَوْصِ بِعَبْدِ الْقَيْسِ خَيْرًا، وَأَكْرِمِ سَرَائِهِمْ»

“That the Messenger of Allah wrote to Al-‘Ala’ b. Al-Hadrami to come to him with twenty men from ‘Abd Al-Qays. He reached him with twenty men headed by ‘Abd Allah b. ‘Awf Al-Ashajj, and appointed after him Al-Mundhir Bin Sawa. The delegate complained of Al-‘Ala’ b. Al-Hadrami, so the Messenger of Allah ﷺ removed him and appointed Aban Bin Sa’id b. Al-‘Aas and said to him: ‘Take care of ‘Abd Al-Qays and respect their chiefs’.” Also, Umar Bin Al-Khattab (ra) removed Sa’d Bin Abi Waqqas (ra) from the governorship simply because of the complaint of the people against him, and he said:

«إِنِّي لَمْ أَغْزِلْهُ عَنْ عَجْزٍ، وَلَا عَنْ خِيَانَةٍ»

“I did not remove him because of deficiency or treason”.

This indicates that the people of the province have the right to express their anger and discontent for their governors and *amirs*, and the *Khalifah* thus has to remove them. Likewise, the *Ummah* Council is allowed, as a representative of all Muslims in the State, to express its anger and discontent for the governors and *Amils* and the *Khalifah* has to remove them immediately if the complaint came from the majority of the Provincial Council or the majority of the *Ummah* Council. In the case of conflict between the views of these two councils, then the priority is given to the Provincial Council, for it is more aware and more acquainted than the *Ummah* Council of the condition of the governor.

With regards to the fifth point, this point has two issues: The first one is the short-listing of the nominees and the second is reducing the shortlist to six people and then to two.

As for the first issue, from following the manner of appointing the guided *Khulafaa*’ it appears there was short-listing of nominees made by the representatives of the Muslims directly or through requesting the *Khalifah* to shortlist the nominees on their behalf.

In the hall of *Bani Sa’idah*, the nominees were Abu Bakr (ra), Umar (ra), Abu ‘Ubaydah (ra) and Sa’id b. ‘Ubadah (ra). These were considered sufficient and the nominations were restricted to them. This took place before the people of the hall, and then by the consent of the companions later on, where they gave the *Bay’a* to Abu Bakr (ra).

Towards the end of Abu Bakr’s (ra) authority, he consulted with Muslims for about three months, discussing with them the post of *Khilafah* after him. After they discussed this with him they agreed to his nomination of Umar (ra); in other words, the nomination was restricted to one candidate.

Restricting of nominees was more clear and obvious after the stabbing of Umar (ra) for they requested him to nominate candidates for them so he confined it to six (nominees) at the

expense of all others, and he emphasised that matter, as is well known.

At the time of nominating ‘Ali (ra), he was the only nominee, without having any one else with him and so there was no need for short-listing.

Short-listing of nominees used to take place before a gathering of Muslims; a matter which would have been opposed and not executed had it been not allowed, for this prevents the right of others in nomination. Therefore, short-listing the nominees for *Khilafah* post is allowed due to the consensus (*Ijma’*) of the companions. Thus, the *Ummah*, or in other words, her representatives, are allowed to shortlist the nominees, whether this short-listing was conducted directly by the *Ummah*, or through authorising the outgoing *Khalifah* to do that on their behalf.

This is in regards to short-listing. In regards to evidence for the short-listing of the nominees to six people at first, this is taken from the action of Umar (ra); whilst shortening the list to two after that, is taken from the action of Abdul Rahman Ibn Auf (ra). Additionally, this verifies the meaning of the *Bay’a* by the majority of the Muslim electorate for if the nominees were more than two, then the winner amongst them might get for example thirty percent of the electorate, i.e. less than their majority. The winner would get the majority in the case that the nominees were not more than two.

In regards to short-listing of the six and two nominees by the *Ummah* Council, this must be by the *Madhalim* Court to ensure that the nominees fulfil the qualification conditions; this is because the short-listing conducted by the *Ummah* Council is for electing a *Khalifah* from amongst them. It means, in other words, that they must fulfil the qualification conditions. Therefore, the *Madhalim* Court would exclude from the nominees to the *Khilafah* anyone who does not fulfil the qualification conditions. After that the *Ummah* Council would make the shortlist from the

nominees decided by the *Madhalim* Court to have fulfilled the qualification conditions.

This is where the fifth point is derived from.

The Social System

Article 112

The primary role of women is that she is a mother and responsible over the household and she is an honour that must be protected.

This article is derived from numerous evidences: **firstly**, the evidences which encourage marriage and that the woman has more rights in the nursing of the child. **Secondly**, the evidences which prohibit the woman from leaving her husband's house without his permission and obligate her to serve her husband. **Thirdly**, the evidences regarding the *Awrah* (private parts of body that must be covered in public and in front of non-family members), the private sphere of life for her, the prohibition of *khalwah* (for an unrelated man and woman to be alone together in private space), the prohibition of the woman travelling without a close male relative and the prohibition of *Tabarruj* (beautification which attracts attention).

The first evidence has been mentioned in a narration from Anas that the Prophet ﷺ used to instruct people to be chaste, while vigorously prohibiting celibacy; he ﷺ said

«تَزَوُّجُوا الْوُدُودَ الْوُلُودَ، إِنِّي مُكَاثِّرٌ بِكُمْ الْأَنْبِيَاءَ يَوْمَ الْقِيَامَةِ»

“Marry from those who are tender and fertile, for indeed I will compete with the Prophets in your great numbers on the day of judgement” (reported by Ahmad with a *Hasan* chain). Ma'qal b. Yasar narrated

«جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: إِنِّي أَصَبْتُ امْرَأَةً ذَاتَ حَسَبٍ وَجَمَالٍ وَإِنَّهَا لَا تَلِدُ أَفَأَتَزَوَّجُهَا؟ قَالَ: لَا، ثُمَّ أَتَاهُ الثَّانِيَةَ فَنَهَا، ثُمَّ أَتَاهُ الثَّالِثَةَ فَقَالَ: تَزَوَّجُوا الْوُدُودَ الْوُلُودَ فَإِنِّي مُكَاثِّرٌ بِكُمْ الْأُمَمَ»

“A man came to the Prophet and said ‘I have found a woman who is beautiful and of noble descent, but she cannot bear children. Shall I marry her?’ He said: ‘No’. Then he came to him again for the second time and he told him not to. Then he came to him a third time, so the Prophet said ‘Marry those who are tender and fertile, for indeed I will compete against the other nations with your great numbers’” (reported by Abu Dawud and Ibn Hibban and Al-Hakim, who authenticated it). This indicates that the wisdom behind marriage and the intended result is childbirth, and he ﷺ prohibited marrying a woman who was known by her fiancé to be barren, though this is a non-decisive prohibition due to the absence of an indication of decisiveness, as well as the evidences reported that permit withdrawal, in other words, for the sake of preventing pregnancy. From these evidences is what Muslim reported from Jabir who said

«كُنَّا نَعْزِلُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ فَبَلَغَ ذَلِكَ نَبِيَّ اللَّهِ ﷺ فَلَمْ يَنْهَنَا»

“We used to withdraw (practice coitus interruptus) at the time of the Messenger of Allah ﷺ, and that reached the Messenger of Allah ﷺ and he did not prohibit it”. So it is permitted to marry a woman who is barren, though it is preferable to marry those who can bear many as it is recommended in accordance with the previous narrations. In other words, the woman is primarily to be a mother, and then a wife and to have spousal relations in accordance with what the *Shari’ah* made permitted and recommended. Additionally, it is narrated from ‘Abd Allah b. Amr b. Al-‘Aas

«أَنَّ امْرَأَةً قَالَتْ: يَا رَسُولَ اللَّهِ، إِنَّ ابْنِي هَذَا كَانَ بَطْنِي لَهُ وَعَاءٌ، وَثَدْيِي لَهُ سِقَاءٌ، وَحَجْرِي لَهُ حِوَاءٌ، وَإِنَّ أَبَاهُ طَلَّقَنِي وَأَرَادَ أَنْ يَنْتَزِعَهُ مِنِّي، فَقَالَ لَهَا رَسُولُ اللَّهِ ﷺ: أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي»

“A woman said: “O Messenger of Allah, this is my son whom my stomach carried, my breast is a water-skin for him, and my lap is a guard for him. His father has divorced me and wants to take him away from me”. He ﷺ said: “You have more right to him as long as you do not remarry”” (reported by Abu Dawud and Al-Hakim that authenticated it and Al-Dhahabi confirmed it). So the narration enumerated the various situations which occur between a mother and child, which indicates the importance of her motherhood, and he ﷺ gave her custody. These two narrations indicate that the primary role of the woman is to be a mother, in addition to the rules related to pregnancy, birth and suckling the child.

As for the second evidence, it is narrated from Anas that a man travelled having prohibited his wife from leaving their home, and subsequently her father became ill and so she sought permission from the Messenger of Allah ﷺ to visit him, and the Messenger ﷺ said to her

«اتَّقِي اللَّهَ وَلَا تُخَالِفِي زَوْجَكَ»

“Fear Allah, do not disobey your husband” as mentioned by Ibn Qudamah in *Al-Mughni*. It is narrated from Abu Hurayrah that the Messenger of Allah ﷺ said

«لَا يَحِلُّ لِلْمَرْأَةِ أَنْ تَصُومَ وَزَوْجُهَا شَاهِدٌ إِلَّا بِإِذْنِهِ»

“It is not allowed for a woman to fast while her husband is present, unless she has his permission” (agreed upon narration). And it is narrated from Ibn ‘Abbas that the Prophet ﷺ said

«وَمِنْ حَقِّ الزَّوْجِ عَلَى زَوْجَتِهِ أَنْ لَا تَصُومَ تَطَوُّعًا إِلَّا بِإِذْنِهِ»

“The husband has a right over his wife that she does not undertake any voluntary fasting except with his permission” (reported by Al-Tabarani). The *Shari’ah* has given women the right to visit their father if they became ill, and the right to do voluntary fasting, but it made it subservient to the husband’s right over her, which indicates that the primary role is that she is responsible over the home.

Additionally, it is reported that the Prophet ﷺ

«قَضَى عَلَى ابْنَتِهِ فَاطِمَةَ بِخِدْمَةِ الْبَيْتِ. وَعَلَى عَلِيٍّ مَا كَانَ خَارِجَ الْبَيْتِ»

“ruled that his daughter Fatima discharges housework, and ‘Ali the outdoor work” reported by Ibn Abi Shaybah from Damrah b. Habib, and although Abu Bakr Bin Maryam Al-Ghassani is in the chain of the narration, the meaning of it is in the narration which Ahmad reported in *Al-Musnad* with a *Hasan* chain from ‘Ali (ra) which mentioned:

«... فَقَالَ عَلِيٌّ رَضِيَ اللَّهُ عَنْهُ يَا رَسُولَ اللَّهِ وَاللَّهِ لَقَدْ سَنَوْتُ حَتَّى اشْتَكَيْتُ صَدْرِي وَقَالَتْ فَاطِمَةُ رَضِيَ اللَّهُ عَنْهَا قَدْ طَحَنْتُ حَتَّى مَجَلَّتْ يَدَايَ وَقَدْ جَاءَكَ اللَّهُ بِسَبِيٍّ وَسَعَةٍ فَأَخَذِمْنَا... ثُمَّ قَالَ أَلَا أُخْبِرُكُمَا بِخَيْرٍ مِمَّا سَأَلْتُمَانِي قَالَا بَلَى فَقَالَ كَلِمَاتٌ عَلَّمْنِيهِنَّ جَبْرِيلُ عَلَيْهِ السَّلَامُ فَقَالَ تُسَبِّحَانِ فِي دُبُرِ كُلِّ صَلَاةٍ عَشْرًا وَتَحْمَدَانِ عَشْرًا وَتُكَبِّرَانِ عَشْرًا وَإِذَا أَوَيْتُمَا إِلَى فِرَاشِكُمَا فَسَبِّحَا ثَلَاثًا وَثَلَاثِينَ وَاحْمَدَا ثَلَاثًا وَثَلَاثِينَ وَكَبِّرَا أَرْبَعًا وَثَلَاثِينَ قَالَ فَوَاللَّهِ مَا تَرَكْتُهُنَّ مِنْذُ عَلَّمْنِيهِنَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ فَقَالَ لَهُ ابْنُ الْكَوَّاءِ وَلَا لَيْلَةَ صَفِّينَ فَقَالَ فَاتَلَكُمُ اللَّهُ يَا أَهْلَ الْعِرَاقِ نَعَمْ وَلَا لَيْلَةَ صَفِّينَ»

“...and so ‘Ali said: O Messenger of Allah, I swear by Allah I irrigated the land until my chest hurt, and Fatima said I have grinded flour until my hands got blisters, and Allah has brought you many captives so help us (in this work)...So he ﷺ

said: should I inform you of something which is better than what you asked me? They said yes. He said: Some words which Jibril taught me: After each prayer Say Glory to Allah (sabiḥ) ten times, Praise be to Allah (ḥamd) ten times, and Allah is Great (Kabbir) ten times, and when you go to bed then Sabiḥ, and Ḥamd thirty three times each and Kabbir thirty four times. I swear by Allah, I did not leave doing that from the time that the Messenger of Allah taught me. Then Ibn Al-Kawā asked him: Not even on the night of Siffin (the battle with Mu'awiyah)? So he replied: May Allah fight you O people of Iraq, Yes, not even on the night of Siffin".

In this report the Messenger ﷺ did not blame Ali (ra) for working on the irrigation outdoors, nor Fatimah (ra) for grinding flour indoors, but rather gave them some words which would make the difficulty of life easier for them, and be of more benefit and lasting to them in the hereafter.

Similarly the narration indicates the obligation of the work of the woman in her house, and the man's work outside of it, since the request for a servant is an evidence of the difficulty of the work upon her inside and him outside, and if these issues were not obligatory upon them there would be no indication from the difficulty of the work, in which case there would be no difficulty and no hardship, if it was not obligatory.

This is from the angle of what is understood from the narration of Ahmad as a support for the narration of Ibn Abi Shaybah.

Also Abu Hanifah used the narration, as did a number of jurists, such as Abu Bakr Bin Abi Shaybah who reported the narration, as well as Abu Ishaq Al-Jurjani who also reported the narration through numerous chains as mentioned by the author of *Al-Mughni*, though he (ibn Qudama) did not use it himself.

In the same way Ibn Habib Al-Maliki in *Al-Wadiha* took the narration and used it. Ibn Hajar mentioned in *Fateh Al-Bari*: "And Ibn Habib reported from Asbagh and Ibn Al-Majishun from

Malik that the housework is obliged upon the woman, even she was noble, if her husband was not financially able to pay (for a servant). He said: and for that reason the Prophet ﷺ obliged Fatima with the indoor work and Ali the outdoor”.

Based upon that we take the mentioned narration of Ibn Abi Shaybah

«قَضَى عَلَى ابْنَتِهِ فَاطِمَةَ بِخِدْمَةِ الْبَيْتِ. وَعَلَى عَلِيٍّ مَا كَانَ خَارِجَ الْبَيْتِ»

“he ﷺ ruled his daughter Fatima with the housework, and Ali with the outdoor work”.

And he ﷺ used to order his wives to help him. Muslim reported from 'Aisha (ra) the mother of the believers that the Messenger of Allah ﷺ said

«يَا عَائِشَةُ هَلِّمِي الْمُدْيَةَ، ثُمَّ قَالَ اشْحَذِيهَا بِحَجَرٍ فَفَعَلْتُ»

“O 'Aisha, bring the knife and sharpen it with a stone”. And Ahmad reported with an authentic chain from Ya'ish b. Takhfa Bin Qays Al-Ghifari who said my father was from the *Al-Suffa* (poor people at the time of the Prophet ﷺ)...until he mentioned

«فَانْطَلَقْنَا مَعَهُ إِلَى بَيْتِ عَائِشَةَ، فَقَالَ: يَا عَائِشَةُ، أَطْعِمِينَا ... ثُمَّ قَالَ: يَا

عَائِشَةُ، اسْقِينَا»

“So we went with him to the house of 'Aisha, so he said: O 'Aisha, feed us, ... then he said, O 'Aisha, bring us drinks”. If serving him conflicted with any action that the *Shari'ah* made *Mubah* (permitted) for her, such as trade, or anything recommended, such as recommended prayers, then serving him is preferred. So it would be upon her to leave behind the optional and recommended actions and instead serve him. These two evidences are proof that the primary role for the woman is to be responsible for the household.

As for the third evidence, the Prophet ﷺ said

«إِنَّ الْجَارِيَةَ إِذَا حَاضَتْ لَمْ يَصْلُحْ أَنْ يُرَى مِنْهَا إِلَّا وَجْهَهَا وَيَدَاهَا إِلَى الْمِفْصَلِ»

“If a girl reaches puberty (indicated by starting menstrual cycle), it is not correct that any part of her be seen other than her face and her two hands up to the wrists” reported by Abu Dawud as a Mursal narration from Qatadah, and Qatadah had met the companion Anas and so his Mursal narrations are acted upon. This is the restriction for the woman’s clothing and her *Awrah*, and it a proof that she is an honour that must be protected.

Additionally, Allah (swt) said

﴿يَتَأَيُّهَا الَّذِينَ ءَامَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا﴾

“O you who have believed, do not enter houses other than your own houses until you ascertain welcome (ask for permission) and greet their inhabitants.” (TMQ 24:27), and so Allah (swt) prohibited to enter houses without the permission of their occupants, and considered lack of permission to be estrangeent, and the granting of permission to be made familiar, and said

﴿حَتَّى تَسْتَأْذِنُوا﴾

“Until you ascertain welcome.” which is an allusion that indicates requesting permission. The permission here is intended to prevent entering into a house when the woman is not covered, which is why permission is necessary even with the mother. In a narration:

«حَدَّثَنِي مَالِكٌ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ عَطَاءِ بْنِ يَسَارٍ أَنَّ رَسُولَ اللَّهِ ﷺ سَأَلَهُ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ أَسْتَأْذِنُ عَلَى أُمِّي؟ فَقَالَ: نَعَمْ، قَالَ الرَّجُلُ: إِنِّي مَعَهَا فِي الْبَيْتِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: اسْتَأْذِنْ عَلَيْهَا، فَقَالَ الرَّجُلُ: إِنِّي خَادِمُهَا فَقَالَ لَهُ رَسُولُ اللَّهِ ﷺ: اسْتَأْذِنْ عَلَيْهَا أَتُحِبُّ أَنْ تَرَاهَا عُرْيَانَةً؟ قَالَ: لَا، قَالَ: فَاسْتَأْذِنْ عَلَيْهَا»

“Malik told me from Safwan b. Sulaym from ‘Ata’ b. Yasar a man asked the Prophet ﷺ ‘Should I seek permission to see my mother?’. He ﷺ said ‘Yes’. So the man said “she is in the house with me”. He ﷺ said ‘Seek her permission. So the man said ‘She has no one else to serve her other than me, should I still seek permission every time I see her?’. He ﷺ said ‘Seek her permission. Would you like to see her naked?’ The man replied: ‘No’. So the Prophet ﷺ said ‘So seek permission’” reported by Malik in *Al-Muwatta* and Abu Dawud in *Al-Marasil* from ‘Ata’ b. Yasar, and Ibn ‘Abd Al-Barr said in *Al-Tamhid* that it is an authentic Mursal narration, and in *Al-Istidhkar* he said it is from the authentic Mursal narrations. And Allah (swt) said

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ خُمُرَهُنَّ عَلَى جُيُوبِهِنَّ
 وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ
 أَبْنَاءِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ
 نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّبِيعِينَ غَيْرُ أُولَى إِلَازِمَةٍ مِنَ الرِّجَالِ أَوْ الصِّبْيِ
 الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَتِ النِّسَاءِ﴾

“And tell the believing women to not expose their adornment except that which [necessarily] appears thereof and to wrap [a portion of] their headcovers over their chests

and not expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, that which their right hands possess, or those male attendants having no physical desire, or children who are not yet aware of the private aspects of women.” (TMQ 24:31). Therefore, Allah (swt) has defined what can be shown by the woman in her private life, and that she can only let her family (*Maharim* – those men who cannot marry her) and those who do not have sexual desires (children and elderly) see more than her face and hands. This restriction clearly indicates that she is an honour which must be protected, and so she is surrounded with these rules. In the same manner that her *Awrah* is defined, the people who are permitted to see more from her *Awrah* are also precisely defined, which indicates that the woman is protected.

Additionally, it has been narrated from Ibn ‘Abbas that he heard the Prophet ﷺ addressing the people saying

«لَا يَخْلُونُ رَجُلٌ بِامْرَأَةٍ إِلَّا مَعَ ذِي مَحْرَمٍ»

“A man should not be alone with a woman unless she has a Mahram (male family member) with her” (agreed upon). It is also narrated that the Prophet ﷺ said

«لَا يَحِلُّ لَامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ تَسَافِرُ مَسِيرَةَ يَوْمٍ إِلَّا مَعَ ذِي

مَحْرَمٍ»

“It is not permitted for a woman who believes in Allah and the Day of Judgement to travel a day and night journey without Mahram” (reported by Muslim). And in the narration of Ibn ‘Abbas that the Prophet ﷺ said

«... وَلَا تُسَافِرِ الْمَرْأَةُ إِلَّا مَعَ ذِي مَحْرَمٍ، فَقَامَ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّ

امْرَأَتِي خَرَجَتْ حَاجَةً وَإِنِّي اكْتَسَبْتُ فِي غَزْوَةٍ كَذَا وَكَذَا، قَالَ: انْطَلِقْ فَحُجَّ مَعَ امْرَأَتِكَ»

“A woman must not travel unless she is with her Mahram” A man stood up and said ‘O Messenger of Allah: my wife has gone to pilgrimage and I was assigned to such and such expedition. The Messenger ﷺ said “Then leave and go on pilgrimage with your wife” (reported by Muslim from Ibn ‘Abbas). So the Messenger ﷺ withdrew him from the army which was going out to battle, in order to protect his wife.

Also, Allah (swt) said

﴿وَالْفَوَاحِشُ مِنَ النِّسَاءِ الَّتِي لَا يَرْجُونَ نِكَاحًا فَلَيْسَ عَلَيْهِنَّ جُنَاحٌ أَنْ يَضَعْنَ ثِيَابَهُنَّ غَيْرَ مُتَبَرِّجَاتٍ بِزِينَةٍ﴾

“And women of post-menstrual age who have no desire for marriage - there is no blame upon them for putting aside their outer garments [but] not displaying adornment .” (TMQ 24:60). The meaning is not that they should not be beautified, since beautification is permitted for the woman without any restriction, rather they should not display their beautification in such a way that would turn men’s attention towards them, and so the prohibition is for the open display of the beautification and not the beautification itself.

These evidences all indicate conclusively that the woman is an honour that must be protected, and accordingly the proof of this article has been made clear.

Article 113

In origin men and women are segregated, and do not come together except for a need by *Shar’* agrees to it and agrees to their assembly for it , such as trade and the pilgrimage.

This article is derived from numerous evidences. Firstly: the *Shari’ah* divided the Muslim’s life between the general and

private spheres, and in the woman's private life she can display what is above her *Awrah* to her *Maharim* (close family relatives), whereas in her public sphere she cannot display anything from her body except her face and hands. Secondly, the *Shari'ah* made the rows of the woman in prayer behind that of the men. Thirdly, the *Shari'ah* ordered men to lower their gaze from the women, and vice versa. Fourthly, the woman has been ordered to cover herself in modest clothing which covers every part of the places of adornment, except for that which is apparent from her (in other words, her hands and face). Fifthly, it is permitted for her to display what is above her *Awrah* in her private life between her *Maharim*.

All of the evidences for these rules indicate that the basis is that men are segregated from women, and so each of them lives in a different sphere of life than the other. Along with this, the woman has had certain issues made permitted, recommended and obligatory upon her. Therefore, it is imperative that she undertakes what is obligatory, and recommended, and permitted, but without *Tabarruj* (beautification which attracts attention) and with the clothing which Allah (swt) described in the Quran with His (swt) words

﴿وَلْيَضْرِبْنَ خُمُرَهُنَّ عَلَىٰ جُيُوبِهِنَّ﴾

“And to wrap [a portion of] their headcovers over their chests.” (TMQ 24:31) is the upper/outer clothing; whereas His (swt) words

﴿يُدْنِينَ عَلَيْهِنَّ مِنْ جَلِيبِهِنَّ﴾

“Bring down (let down) over themselves their wrapping outer garments.” is referring to the clothing from underneath, because the *Jilbab* is worn above the clothing. Al-Jawhari said in *Al-Sihhah* “The *Jilbab* is the cover and some say it is a sheet”. In the Al-Muheet dictionary it mentions “the *Jilbab* is

in the form of the *Sirdab* or the *Sinmar*, which is the gown or a large garment for women under the cover, or conceals her clothing like a cover”. And to “**draw**” (*Idnaa*) clothing is to lower it to the bottom; it is said “*draw the cover, lower it*”, and the meaning of drawing here is lowering, and the only meaning of lowering the clothing is to lower it to the bottom. And His (swt) words

﴿غَيْرَ مُتَّبَرِّجَاتٍ بِزِينَةٍ﴾

“**Not displaying adornment.**” (TMQ 24:60) is with respect to the open display of beautification (*Tabarruj*).

Therefore, she is allowed to go out dressed in accordance with what the *Shari’ah* specified for her, and meet with men in order to undertake what the *Shari’ah* allowed her to do, such as buying, selling, employment, appointing proxies, custody and so on, and to carry out what has been made obligatory upon her such as *Hajj* and paying the *Zakah*, or recommended upon her such as voluntary charity, helping the poor, treating the sick and so on. These needs have been confirmed from the legislative angle for her by the *Shari’ah*, whether they were obligatory, recommended, or permitted, and has confirmed the gathering of men and woman while they are undertaken. Therefore, these evidences indicate that the method of life in Islam is to segregate men from the women in the private sphere, and allow men and women to gather in the public sphere in order to carry out whatever was obligatory, recommended, or permitted upon them with the dress in accordance with what the *Shari’ah* specified to her. These are the evidences for this article.

Article 114

The woman has been given the same rights as man, and whatever was obliged upon man is also obliged upon the woman, except that which was specified for her or him by the

Shari'ah evidences. Accordingly, she has the right to partake in trade, agriculture and industry, and to undertake contracts and transactions, to possess all forms of property, to invest her wealth whether personally or through proxy, and to personally carry out all worldly affairs.

The evidence for this article is that when the Legislator (swt) addressed the worshippers, He (swt) addressed them in their characteristic as human beings, with no concern as to whether the one addressed was male or female. Allah (swt) said "Say, [O Muhammad],

﴿يَتَأْتِيهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا﴾ [الأعراف ١٥٨]،
 ﴿يَتَأْتِيهَا النَّاسُ اتَّقُوا رَبَّكُمُ﴾ [الحج ١]، ﴿يَتَأْتِيهَا الَّذِينَ ءَامَنُوا اسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ﴾ [الأنفال ٢٤]، ﴿كُتِبَ عَلَيْكُمُ الصِّيَامُ﴾ [البقرة ١٨٣]، ﴿فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ﴾ [البقرة ١٨٥]، ﴿وَأَقِيمُوا الصَّلَاةَ﴾ [البقرة ٤٣]، ﴿خُذْ مِنْ أَمْوَالِهِمْ﴾ [التوبة ١٠٣]، ﴿إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ﴾ [التوبة ٦٠]، ﴿وَالَّذِينَ يَكْتُمُونَ الذَّهَبَ وَالْفِضَّةَ﴾ [التوبة ٣٤]، ﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾

"O mankind, indeed I am the Messenger of Allah to you all." (TMQ 7:158), "O mankind, fear your Lord." (TMQ 4:1), "O you who have believed, respond to Allah and to the." (TMQ 8:24), "O you who believe! fasting is prescribed for you." (TMQ 2:183), "So whoever sights [the new moon of] the month, let him fast it." (TMQ 2:185), "And establish prayer." (TMQ 2:43), "Take, [O, Muhammad], from their wealth." (TMQ 9:103), "Zakah expenditures are only for the poor and for the needy." (TMQ 9:60), "And those who hoard gold and

silver.” (TMQ 9:33), “Allah has permitted trade and has forbidden interest(usury).” (TMQ 2: 275), amongst many other similar texts. In all of these the Legislator (swt) addresses humankind with a general address irrespective of whether the one addressed was male or female. And the generality of the address of the Legislator (swt) remains upon its generality. Accordingly, the *Shari’ah* came for humankind and not for men in their characteristic of being male, or for women in their characteristic of being female, rather for mankind from the angle of being human. Therefore, whatever the *Shari’ah* commanded came for humankind, and whatever it includes in terms of rights and obligations are for and upon humankind. This is the evidence for the part of the article which mentions that the woman has the same rights and obligations as the man, because the *Shari’ah* came for humankind, and both male and female are human, and it did not come specifically for woman or man, and so the two of them are equal in respect to the address of the Legislator (swt) regarding the *Shari’ah* rules for humankind.

This generality in the address of the Legislator (swt) remains upon its generality in everything, and remains upon its generality in every rule as long as the *Shari’ah* did not relate it through a *Shari’ah* text as a rule specific for women or men, in which case that rule alone that the text addressed would be specific to women or men. The *Shari’ah* remains upon its generality addressing humankind irrespective of gender,

﴿يَأَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا﴾

“Say, [O Muhammad], "O mankind, indeed I am the Messenger of Allah to you all.” (TMQ 7:158), and all of the remaining rules remain upon their generality for humankind irrespective of gender

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا اسْتَجِيبُوا لِلَّهِ وَلِلرَّسُولِ﴾ [الأنفال ٢٤]،
﴿وَأَطِيعُوا اللَّهَ وَالرَّسُولَ﴾ [آل عمران ١٣٢]، ﴿فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ
فَلْيَصُمْهُ﴾ [البقرة ١٨٥]، ﴿وَأَشْهَدُوا ذَوَىٰ عَدْلٍ مِّنكُمْ﴾

“O you who have believed, respond to Allah and to the Messenger.” (TMQ 8:24), **“And obey Allah and the Messenger.”** (TMQ 3:132), **“Whoever sights [the new moon of] the month, let him fast it.”** (TMQ 2:185), **“. And bring to witness two just men from among you.”** (TMQ 65:2) and whatever else came regarding the rules. All of these remain upon their generality which addressed humankind without regard as to whether they were male or female.

Therefore, in origin the Legislator (swt) made the *Shari'ah* for humankind, not for men or women specifically, but rather for both of them as human beings. Then, the Legislator (swt) laid down some rules specific for women and some specific for men, however this specificity is restricted to those rules alone and does not go beyond them or the texts which came to explain them. Neither of them is charged with a rule specifically unless there is a clear text related which specifies it to one of the two genders. So the specification of women or men with certain rules is an exception to the generality, and so the *Shari'ah* remains upon its generality as do all of its rules, and any exception is limited to what the text mentions and does not go any further. For example, there are specific rules for women such as leaving prayer, and eating in Ramadan during the menstrual cycle, and such as making the witness statement of a single woman sufficient in those cases which only they would be privy to such as virginity without requiring the normal condition regarding witnesses, as this is specific to women and there are texts regarding it, but it does not apply to anything else at all; rather she remains addressed by the address of the Legislator (swt) in the same manner as man is, since the address is for humankind and not for

a specific gender. Also, for example, there are rules which are specific to men such as ruling or authority, and so it is not valid for anyone other than a man to undertake it. This is specific to men, and has had a text narrated regarding it, and so it is specific to men alone. However this specification is related to ruling alone and not the judiciary or managing the departments of the state because the text came regarding ruling, or those who govern, and nothing else. And it is restricted to what came in the text alone, and will not be specified at all by anything which is not related by text; rather the man remains addressed by the address of the Legislator (swt) in the same manner as the woman since the address is for humankind and not for a specific gender.

Based upon this, there is nothing in Islam called women's rights or men's rights, or women's obligations and men's obligations. Rather, the rights and obligations in Islam are for humankind in their characteristic as human beings, without any attention as to whether they are male or female; rather irrespective of their gender. Accordingly, all the laws of the *Shari'ah* are for humankind while some are exceptions - so sometimes the woman is addressed in her characteristic as a female by specific text and at other times the man is addressed in his characteristic as a male by specific text.

Due to the generality of the *Shari'ah* and its rules, the woman can work in trade, agriculture, and industry in the same way as the man, since the address of the Legislator (swt) came for humankind.

She can undertake all the verbal actions of contracts and transactions, since the address of the Legislator (swt) came for humankind.

She can own any type of property and invest her wealth whether personally or otherwise, since the address of the Legislator (swt) came for humankind.

She can teach and carry out *Jihad* since the address of the Legislator (swt) came for humankind.

She can partake in politics, join political parties and account the ruler, since the address of the Legislator (swt) came for humankind.

She can directly engage in all the affairs of public life, in exactly the same manner as the man, in everything due to the citizen and whatever is required to make a living, since the address of the Legislator (swt) came for humankind.

Article 115

It is permitted for a woman to be appointed in civil service and positions in the judiciary apart from the Court of Injustices. She can elect members of the *Ummah's* council, and be a member herself, and she can participate in the election of the Head of State and in giving him the pledge of allegiance.

The evidence for the article is the evidence for employment, since the civil servant and judge are employees. The evidence for employment is general and unrestricted. It is narrated that the Prophet ﷺ said

«أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرَقُهُ»

“Give the employee his wages before his sweat dries” (reported by Ibn Maja from Abdullah Bin Umar). The word “employee” here is general and encompasses both women and men. In the same vein, Al-Bukhari reported from Abu Huraira that the Prophet ﷺ said

«ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ» إِلَى أَنْ قَالَ: «وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا فَاسْتَوْفَى مِنْهُ وَلَمْ يُعْطِ أَجْرَهُ»

“I will be against three on the Day of Judgement” until he ﷺ said ***“and a man who employs an laborer, and gets the***

full work done by him, but does not pay him his wages.”; the word employee is unrestricted and encompasses both women and men. The definition of employment is “a contract upon an exchange of a service for remuneration” and the work in government departments and judiciary is a service, undertaken upon a contract between the State and the civil servant in exchange for remuneration, which is the salary. Umar b. Al-Khattab (ra) appointed Al-Shifa, who was a woman from his tribe, as a judge in the market place (*hisbah*) in Madinah, though it is not permitted for a woman to be a judge of the *Madhalim* court and nor to be the chief judge responsible for the *Madhalim* judiciary, since that is considered a ruling position.

As for the *Ummah* council which is for consultation and accounting, consultation (*Shura*) is confirmed by a general evidence

﴿وَشَاوِرْهُمْ فِي الْأَمْرِ﴾

“And consult them in the matter” (TMQ 3:159),

﴿وَأَمْرُهُمْ شُورَى بَيْنَهُمْ﴾

“And whose affair is [determined by] consultation among themselves” (TMQ 42:38), and when the Messenger ﷺ saw that the Muslims refused to shave and cut their hair, he ﷺ went to Umm Salamah and said to her

«لَقَدْ هَلَكَ الْمُسْلِمُونَ»

“*The Muslims are destroyed*” as reported by Al-Bukhari from Al-Mawar Bin Makhzama, and he ﷺ told her what had happened, so she said to him ﷺ “*Shave your head, they will not differ from you*”, so he ﷺ followed her advice and as a result the Muslims shaved and cut their hair. Then she said to him “*Set off with them quickly*”, and so he ﷺ took her advice. So he ﷺ took the opinion of a woman, which indicates that he took her opinion

in any issue whether politics or otherwise. The member of the *Shura* council is simply a proxy to represent opinion, and it is permitted for a woman to be appointed as a proxy in the same manner as a man, due to the generality of the evidence. The issue of accounting is the same since the texts regarding enjoining the good and forbidding the evil are general, encompassing both men and women – Muslim reported from Umm Salama that the Messenger of Allah ﷺ said

«سَتَكُونُ أُمَرَاءُ فَتَعْرِفُونَ وَتُنْكِرُونَ، فَمَنْ عَرَفَ بَرِيءٌ، وَمَنْ أَنْكَرَ سَلِمَ، وَلَكِنْ مَنْ رَضِيَ وَتَابَعَ، قَالُوا: أَفَلَا نُقَاتِلُهُمْ؟ قَالَ: لَا مَا صَلَّوْا»

“There be Amirs and you will like their good deeds and dislike their bad deeds. One who sees through their bad deeds (and tries to prevent their repetition), is absolved from blame, but one who hates their bad deeds (in the heart of his heart, being unable to prevent their recurrence), is (also) safe. But one who approves of their bad deeds and imitates them is spiritually ruined. People asked the Prophet: Shouldn’t we fight against them? He ﷺ replied: No, as long as they say their prayers” and prayer here is an allusion to ruling by Islam, and the narration is general for both men and women. So just as men account the rulers, so do women.

As for the issue of men accounting the rulers, Al-Bukhari and Muslim reported from Abu Huraira:

«لَمَّا تُؤَيِّ رَسُولُ اللَّهِ ﷺ وَكَانَ أَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُ، وَكَفَرَ مَنْ كَفَرَ مِنَ الْعَرَبِ، فَقَالَ عُمَرُ رَضِيَ اللَّهُ عَنْهُ: كَيْفَ تُقَاتِلُ النَّاسَ وَقَدْ قَالَ رَسُولُ اللَّهِ ﷺ: أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَقُولُوا لَا إِلَهَ إِلَّا اللَّهُ، فَمَنْ قَالَهَا فَقَدْ عَصَمَ مِنِّي مَالَهُ وَنَفْسَهُ إِلَّا بِحَقِّهِ، وَحِسَابُهُ عَلَى اللَّهِ. فَقَالَ: وَاللَّهِ، لَأُقَاتِلَنَّ مَنْ فَرَّقَ بَيْنَ الصَّلَاةِ وَالزَّكَاةِ، فَإِنَّ الزَّكَاةَ حَقُّ الْمَالِ، وَاللَّهُ، لَوْ

مَنْعُونِي عَنَّا كَانُوا يُؤَدُّونَهَا إِلَى رَسُولِ اللَّهِ ﷺ لِقَائَتِهِمْ عَلَى مَنَعِهَا. قَالَ عُمَرُ رَضِيَ اللَّهُ عَنْهُ :
فَوَاللَّهِ، مَا هُوَ إِلَّا أَنْ قَدْ شَرَحَ اللَّهُ صَدْرَ أَبِي بَكْرٍ رَضِيَ اللَّهُ عَنْهُ ، فَعَرَفْتُ أَنَّهُ الْحَقُّ»

“When the Messenger of Allah died and Abu Bakr took office, and those from the Bedouins disbelieved, Umar said: How can we fight people and the Messenger of Allah said: I have been ordered to fight the people until they say La ilaha illa Allah, and whoever does so then their wealth and blood are protected except by its right, and their account is with Allah. So Abu Bakr said: I swear by Allah, I will fight whosoever differentiates between the prayer and the Zakah, since Zakah is the right of the wealth, By Allah, if they deny me a young goat, that they paid to the Messenger of Allah I will fight them over their denial. Umar said: By Allah, it was only that Allah had opened the chest of Abu Bakr (to understanding), and so then I realised it was the truth”. As for women accounting the ruler, it is mentioned by Al-Qurtubi in his *Tafsir*, Al-Amidi in *Al-Ihkam* and Al-Ghazali in *Al-Mustasfa* that a woman accounted Umar (ra) when he prohibited people from giving dowry of greater than four hundred *dirham*. She said to him: You have no right to do this Umar. Have you not heard the words of Allah

﴿وَأَتَيْتُمُ إِحْدَهُنَّ قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا﴾

“And you have given one of them a great amount [in gifts], do not take [back] from it anything.” (TMQ 4:20) so he said: A woman is correct, and Umar is wrong.

With respect to her participation in elections for the *Khalifah* and giving him the pledge of allegiance, the narration of Umm ‘Atiyyah explicitly mentions how the women gave the pledge of allegiance, reported by Al-Bukhari from Umm ‘Atiyyah:

«بَايَعْنَا النَّبِيَّ ﷺ فَقَرَأَ عَلَيْنَا أَنْ لَا يُشْرِكَنَّ بِاللَّهِ شَيْئًا وَنَهَانَا عَنِ النَّيَاحَةِ،
فَقَبَضَتْ امْرَأَةٌ مِنَّا يَدَهَا...»

“We gave the Prophet the pledge of allegiance and he read for us that they should not disbelieve in Allah, and he forbade us from wailing (over the dead), so one of us withdrew her hand”, and the verse

﴿إِذَا جَاءَكَ الْمُؤْمِنَاتُ يُبَايِعُنَكَ﴾

“O Prophet, when the believing women come to you pledging to you.” (TMQ 60:12) is also explicit in mentioning the woman’s pledge of allegiance, and ,therefore, it is permitted for her to elect the *Khalifah* and give him the pledge of allegiance.

Article 116

It is not permitted for a woman to take a ruling position; so she cannot be a *Khalifah*, nor an assistant, governor or ‘*Amil*, nor undertake any action considered to be ruling. In the same manner she cannot be the head judge and nor a judge in the *Madhalim* court, nor the Amir of Jihad.

The evidence for this article is what Al-Bukhari narrated from Abu Bakra who said

لما بلغ رسول الله ﷺ أن أهل فارس ملكوا عليهم بنت كسرى قال: «لَنْ يُفْلِحَ قَوْمٌ وَلَوْ أَمَرَهُمْ امْرَأَةٌ»

“When the Messenger of Allah ﷺ was told that the daughter of Kisra had been given the reign over the Persians he said: Never will succeed such a nation that make a woman their ruler.” This explicitly mentions that a woman is not permitted to take a ruling position. Accordingly, women are not permitted to undertake anything at all from any of the actions of ruling,

whether the *Khalifah*, assistant, governor, Supreme judge, judge in the *Madhalim* court, or '*amil* in the district, due to the explicitness of the narration forbidding it.

As for women not taking the position of the *Amir* of *Jihad*, despite it not being a ruling position, this is because *Jihad* is not obligatory upon women and so she cannot assume leadership over those for whom *Jihad* is obligatory.

Article 117

The woman lives in public and private spheres; in the public sphere she is permitted to live with women, *Maharim* men, and foreign men (men whom she can marry) on the condition that nothing other than her face and hands can be revealed, and that the clothing is not revealing, besides there is not any open display of adornments. As for the private sphere, she is not permitted to live with anyone other than women and her *Maharim*, and she is not permitted to live with unrelated/foreign men. She is restricted by all the *Shari'ah* rules in both spheres.

The evidence for this article is the verse mentioning seeking permission

﴿ لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَىٰ

أَهْلِهَا ۖ ﴾

“O you who have believed, do not enter houses other than your own houses until you ascertain welcome (ask for permission) and greet their.” (TMQ 24:27), and the verse regarding revealing the beautification to the *Maharim* –

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ
بُعُولَتِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ
بَنِي أَخَوَاتِهِنَّ﴾

“And tell the believing women not to expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons.” (TMQ 24:31) - which are the evidences for the private sphere. The verse mentioning the complete clothing

﴿وَلْيَضْرِبْنَ خُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ﴾

“And tell the believing women to wrap [a portion of] their headcovers over their chests.” (TMQ 24:31) and the *Jilbab*

﴿يُذْنِبْنَ عَلَىٰهِنَّ مِنْ جَلَابِيبِهِنَّ﴾

“O Prophet, tell your wives and your daughters and the women of the believers to bring down (let down) over themselves their outer garments.”, and the verse regarding the prohibition of the open display of adornments

﴿غَيْرَ مُتَّبَرِّجَاتٍ بِزِينَةٍ﴾

“[but] not displaying adornment.” (TMQ 24:60), along with the texts which indicate the obligatory, recommended and permitted actions which Allah (swt) legislated for woman and man without distinction, are all evidences for the public sphere.

However, when Allah (swt) permitted the woman to participate in the public sphere with men, such as the permissibility for her to participate in trade, agriculture, industry,

the civil service, the judiciary, membership of political parties, accounting the ruler, and dealing with life's affairs in the same manner as the man, at the same time He (swt) laid down specific rules. So the clothes which she is permitted to come out with in the public sphere have been specified, in that she has to cover all of her body other than her hands and face, and not display her adornments and beautification openly; Allah said

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا﴾

“And tell the believing women not to expose their adornment except that which [necessarily] appears thereof.” (TMQ 24:31). Ibn ‘Abbas said this is the face and hands, as reported by Al-Bayhaqi in *Al-Sunan Al-Kubra*. The Prophet ﷺ said

«إِنَّ الْجَارِيَةَ إِذَا حَاضَتْ لَمْ يَصْلُحْ أَنْ يُرَى مِنْهَا إِلَّا وَجْهُهَا وَيَدَاهَا إِلَى

الْمِفْصَلِ»

“If a girl reaches puberty (indicated by starting menstrual cycle), it is not right that any part of her be seen other than her face and the two hands up to the wrists” (reported by Abu Dawud as a Mursal narration), and Allah (swt) said

﴿غَيْرِ مُتَبَرِّجَاتٍ بِزِينَةٍ﴾

“[but] not displaying adornment.” (TMQ 24:60), and the Prophet ﷺ also said

«أَيُّمَا امْرَأَةٍ اسْتَعْطَرَتْ فَمَرَّتْ عَلَى قَوْمٍ لِيَجِدُوا مِنْ رِيحِهَا فَهِيَ زَانِيَةٌ»

“Any woman who puts on perfume then passes by people so that they can smell her fragrance then she is an adulteress” (reported by Al-Nasa’i from Abu Musa Al-Ash‘ari, and Al-Hakim authenticated it and Al-Dhahabi confirmed it).

As for how the woman should live in the private sphere, she has been prohibited from living with anyone other than women, *Maharim* or children, and she has been prohibited from appearing in this private sphere in light clothes except in front of those just mentioned. Allah (swt) said

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّبِيعِينَ غَيْرِ أُولَى الْأَرْزَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَتِ النِّسَاءِ﴾

“And tell the believing women not to expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, that which their right hands possess, or those male attendants having no physical desire, or children who are not yet aware of the private aspects of.” (TMQ 24:31).

It is not permitted for anyone to come into her private sphere before taking permission, irrespective of whether they were *Mahram* or not; Allah (swt) said

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا﴾

“O you who have believed, do not enter houses other than your own houses until you ascertain welcome (ask for permission) and greet their inhabitants.” (TMQ 24:27); and the Messenger ﷺ ordered a man to take permission before entering his mother's place.

These are the evidences for this article.

Article 118

It is not permitted for a woman to be alone with a non-Mahram. It is not permitted for her to reveal the adornments (Tabarruj) and the ‘Awrah in front of foreign men.

This article explains three issues:

Firstly – the prohibition of *Khulwah* (to be alone in a private space with a non-Mahram). The evidence is the words of the Messenger ﷺ

«وَلَا يَخْلُونُ رَجُلٌ بِامْرَأَةٍ، فَإِنَّ ثَالِثَهُمَا الشَّيْطَانُ»

“A man should not be in khulwah with a woman, since the third of them is the devil”, reported by Ahmad with an authentic chain from Umar (ra). And his ﷺ words

«لَا يَخْلُونُ رَجُلٌ بِامْرَأَةٍ إِلَّا وَمَعَهَا ذُو مَحْرَمٍ»

“A man is not alone with a woman but the third of them is Ash-Shaitan” (reported by Muslim).

Secondly – prohibition of open display of adornments (*Tabarruj*), or anything which attracts attention. The evidences are His (swt) words

﴿غَيْرَ مُتَّبَرِّجَاتٍ بِزِينَةٍ﴾

“[but] not displaying adornment.” (TMQ 24:60) and His (swt) words

﴿وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ﴾

“And let them not stamp their feet to make known what they conceal of their adornment.” (TMQ 24:31). This is a prohibition of one of the actions of *Tabbaruj*, and *Tabarruj* linguistically means to reveal the beautification. It is mentioned in *Al-Muhit*

dictionary “she did *Tabarruj* – she displayed her beauty to the men”, which is also the *Shari’ah* meaning for it. So *Tabarruj* is different from beautification, because beautification is one thing whereas revealing that beautification is something else; it is possible for her to be beautified and not doing *Tabarruj* if her beautification was normal and not of the type to attract attention. Therefore, the meaning of prohibiting *Tabarruj* is not the absolute prohibition of beautification, since *Tabarruj* is the revealing of the beauty and charms to the foreign men; it is said the woman did *Tabarruj*, she revealed her beauty and charms to foreign men. Also supporting these texts that prohibited the actions of *Tabarruj*, is that with investigation it becomes apparent that they only prohibit the revealing of beautification and charms, and the prohibition of beautification generally is not something which is understood from them. So the words of Allah (swt)

﴿وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ﴾

“And let them not stamp their feet to make known what they conceal of their adornment (TMQ 24:31) is plainly prohibiting the revealing of the beautification, since He (swt) said

﴿لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ﴾

“To make known what they conceal of their adornment.”. It is narrated from Abu Musa Al-Ash‘ari who said

«أَيُّمَا امْرَأَةٍ اسْتَعْطَرَتْ فَمَرَّتْ عَلَى قَوْمٍ لِيَجِدُوا مِنْ رِيحِهَا فَهِيَ زَانِيَةٌ»

“The Messenger of Allah said “Any woman who puts on perfume then passes by people so that they can smell her fragrance then she is an adulteress”, in other words, is like a fornicator, reported by Al-Nasa’i and Al-Hakim who authenticated it. This narration is also prohibiting an action of *Tabarruj*, and it is clear from his words

«اسْتَعْطَرْتُ فَمَرَّتْ عَلَى قَوْمٍ لِيَجِدُوا مِنْ رِيحِهَا»

“who puts on perfume then passes by people so that they can smell her fragrance” that it is a prohibition of revealing the beautification, in other words, the putting on of perfume so that men could smell her. It is narrated by Abu Hurayrah that the Messenger of Allah ﷺ said,

«صِنْفَانِ مِنَ أَهْلِ النَّارِ لَمْ أَرَهُمَا: قَوْمٌ مَعَهُمْ سِيَاطٌ كَأَذْنَابِ الْبَقَرِ يَضْرِبُونَ بِهَا النَّاسَ، وَنِسَاءٌ كَاسِيَاتٌ عَارِيَّاتٌ مُمِيلَاتٌ مَائِلَاتٌ رُءُوسُهُنَّ كَأَسْنِمَةِ الْبُخْتِ الْمَائِلَةِ، لَا يَدْخُلْنَ الْجَنَّةَ وَلَا يَجِدْنَ رِيحَهَا، وَإِنَّ رِيحَهَا لَيُوجَدُ مِنْ مَسِيرَةِ كَذَا وَكَذَا»

“The Messenger of Allah ﷺ said “Two are the types of the the people of Hell whom I did not see: people having flogs like the tails of the ox with them and they would be beating people, and the women who would be dressed but appear to be naked, who would be inclined (to evil) and make their husbands incline towards it. Their heads would be like the humps of the bukht camel inclined to one side. They will not enter Paradise and they would not smell its odour whereas its odour would be smelt from such and such distance.” (reported by Muslim); so this is also from the actions of Tabarruj. It is clear from his ﷺ words “dressed but appear to be naked” that it means the revealing of adornments. His ﷺ words “inclined (to evil) and make men incline towards it” is talking about movements that attract men’s attention. And the words “Their heads would be like the humps of the bukht camel inclined to one side” is talking about revealing the beautification done to their hair, in other words, treating and heaping it around a turban or headscarf or anything similar until it became like the hump of a camel. And the “Bukht” is the Afghani camel, in other words, they arranged their hair to look like the hump of an Afghani camel. This is clearly prohibiting the revealing of beautification to men. And similar to this are all the texts which are related to the prohibition of any action of Tabarruj, all of which make it clear that the prohibition is regarding revealing the beautification in order to provoke men’s inclination towards the woman. And this is supported by the

linguistic meaning of *Tabarruj* which is to reveal the beautification, which is different from beautification itself. Therefore, what is forbidden is the *Tabarruj* with its linguistic indication, and by the indications of the narrations which prohibit any of its actions, whereas beautification without *tabaruuj* is not forbidden.

Thirdly, the prohibition of uncovering the ‘*Awrah* in front of foreign men (men they are able to marry). It is mandatory upon the woman to conceal all of her body apart from her face and hands, according to the evidence

﴿وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا﴾

“And tell the believing women not to expose their adornment except that which [necessarily] appears thereof.” (TMQ 24:31); Ibn ‘Abbas said this means the face and hands as reported by Al-Bayhaqi in *Al-Sunan Al-Kubra*, Ibn ‘Abd Al-Barr in *Al-Tamhid* and Ibn Kathir in *Al-Tafsir*. And the Messenger ﷺ said

«إِنَّ الْجَارِيَةَ إِذَا حَاضَتْ لَمْ يَصْلُحْ أَنْ يُرَى مِنْهَا إِلَّا وَجْهَهَا وَيَدَاهَا إِلَى

الْمِفْصَلِ»

“If a girl reaches puberty (indicated by starting menstrual cycle), it is not right that any part of her be seen other than her face and the two hands up to the wrists” (Mursal narration reported by Abu Dawud), at which point he ﷺ grasped his ﷺ arm, and there was the distance of a grasp between his ﷺ hand and where he ﷺ grasped his arm. Therefore, the whole of the woman’s body apart from her face and hands are *Awrah*, and so it is obligatory for her to conceal it.

The Legislator (swt) made it a condition of the clothing that it covers the skin, in other words, obligated covering the skin by what covers its colour, or in other words, the skin and its colour whether white, red, dark, black or anything else. In other words, the cover should cover the skin and its colour such that the

colours of the skin underneath are not known, otherwise it would not be considered as a cover for the 'Awrah and rather the 'Awrah would be considered visible and not covered, since the Shari'ah cover is that which conceals the colour. The evidence that the Legislator (swt) obligated covering of the body by covering the skin such that its colour is not known is from his ﷺ words

«لَمْ يَصْلُحْ أَنْ يُرَى مِنْهَا»

“it is not correct that any part of her be seen”. This narration is a clear proof that the Legislator (swt) made it a condition of covering the 'Awrah that nothing should be seen from it, or in other words, the skin should be covered by something that does not reveal what is behind it, and so it is obligatory for the woman to cover her 'Awrah by a dress which is not delicate, in other words, does not convey what lies behind it and does not disclose what is under it.

Article 119

It is prohibited for any man or woman to undertake any work which could undermine the morals, or causes corruption in the society.

The evidence for this article is what was narrated from Rafi' b. Rifa'ah who said

«وَنَهَانَا عَنْ كَسْبِ الْأَمَةِ إِلَّا مَا عَمِلَتْ يَدَيْهَا وَقَالَ هَكَذَا بِأَصَابِعِهِ نَحْوَ الْخَبْرِ وَالْغَزَلِ وَالنَّقْشِ»

“The Prophet ﷺ forbade us from benefiting from the slave woman except that which she did with her hands, and said ‘in this manner’ with his fingers, such as bread-making, sewing, and inscribing” reported by Ahmad and authenticated by Al-Zayn, as well as Al-Hakim who also authenticate it; in other

words, he ﷺ prohibited the woman from any work which took advantage of her femininity, while allowing any other type of work. This is understood from the part of the narration which mentions ***“except that which she did with her hands”***, in other words, intended to benefit from her efforts, and its understanding is the prohibition of taking advantage of her femininity. Also, the *Shari’ah* principle ***“The means to something forbidden is also forbidden”*** prohibits any work that could lead to anything forbidden. And the *Shari’ah* principle ***“If one type of a permitted thing leads to harm, only that one is prohibited, and the thing remains permitted”*** prohibits every person, male or female, from working in a job originally permitted for men and women, if the work for that person specifically would lead to a *Haram* for him, or the *Ummah*, or the society, whatever type of *Haram* that may be.

Article 120

Marital life is one of tranquillity; and the couple should live together as companions. The guardianship (*Qawwamah*) of the husband over the wife is a guardianship of care and not ruling. It has been made obligatory for her to obey him, and obligatory upon him to financially support her according to the expected standard of living of one like her.

The evidences for this article are the words of Allah (swt)

﴿هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ

إِلَيْهَا﴾

“It is He who created you from one soul and created from it its mate that he might dwell in security with her.”
(TMQ 7:189), and His (swt) words

﴿وَمِنْ ءَايَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ
بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً﴾

“And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy.” (TMQ 30:21), and living here means contentment. The words of Allah (swt)

﴿وَهُنَّ مِثْلُ الَّذِي عَلَيْنَّ بِالْمَعْرُوفِ﴾

“And due to the wives is similar to what is expected of them, according to what is reasonable.” (TMQ 2:228), and Ibn ‘Abbas said *“They have the right of good companionship, and being taken care of, in the same way that they are to be obedient according to what has been obligated over them with respect to their husbands”* as mentioned by Al-Qurtubi in his *Tafsir*. And His (swt) words

﴿وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ﴾

“And live with them on a footing of kindness and equity.” (TMQ 4:19), and the living (*ishrah*) is the mixing and blending. It is narrated from Jaber that the Messenger of Allah ﷺ said in his address in the farewell pilgrimage

«فَاتَّقُوا اللَّهَ فِي النِّسَاءِ فَإِنَّكُمْ أَخَذْتُمُوهُنَّ بِأَمَانِ اللَّهِ وَاسْتَخْلَلْتُمْ فُرُوجَهُنَّ
بِكَلِمَةِ اللَّهِ»

“Fear Allah with respect to the women, since you took them as a trust with Allah, and you made them permissible to yourselves with the Word of Allah” (reported by Muslim). And it is narrated that he ﷺ said

«خَيْرُكُمْ خَيْرُكُمْ لِأَهْلِهِ وَأَنَا خَيْرُكُمْ لِأَهْلِي»

“The best of you are the best of you towards their wives, and I am the best of you to my wife”, reported by Al-Tirmidhi from 'Aisha (ra), and he considered it *Hasan Sahih Gharib*, and Ibn Hibban, and Al-Hakim who authenticated it. And he ﷺ said

«وَحَيَارُكُمْ حَيَارُكُمْ لِنِسَائِهِمْ»

“The best of you are the best of you towards their wives”, reported by Al-Tirmidhi from Abu Hurayrah and he said it was *Hasan Sahih*. And he ﷺ used to have a good close relationship with his family - playing with his wives, acting kindly towards them and joking with them. If he ﷺ had prayed the *isha* prayer, and entered his house, he would chat with his wife a little before sleeping and make her feel close in that way. All of these evidences indicate that the marital life is one of tranquillity and that the husband must do whatever is required to make the marital life tranquil. It is narrated from Ibn ‘Abbas that he used to say ***“I beautify myself for my woman, in the same way she beautifies herself for me. I love to take every right I have upon her cleanly, which means her rights over me are obligatory, since Allah (swt) said***

﴿وَلَهُنَّ مِثْلُ الَّذِي عَلَيْيَ﴾

“And due to the wives is similar to what is expected of them, according to what is reasonable.” (TMQ 2:227)” (reported by Al-Qurtubi in his *Tafsir*).

Though Allah (swt) has made the man guardian over the household, since He (swt) said

﴿الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ﴾

“Men are in charge of women.” (TMQ 4:34), this guardianship is a guardianship of care and not one of rule and authority. In the *Al-Muhit* dictionary it says “established ... the man and the woman, and upon her, what he prohibited and he

fulfils her issue”, which indicates that the meaning of the guardianship of man over woman from a linguistic point of view is to pay for her maintenance and carry out whatever she needs, and so this linguistic meaning is the meaning used in the verse since there is no *Shari’ah* meaning that has been related regarding it. Therefore, this is the meaning of **“in charge of women”**, and so it is necessary that the guardianship of the man over the woman is to fulfil her issues, and for his relationship with her to be the relationship of companionship, which is how Allah (swt) characterised it saying

﴿وَصَحْبَتُهُ﴾

“And his Sahibah” (TMQ 80:36), meaning his wife.

The Prophet ﷺ used to be a companion to the wives in his household, and not as a leader dominating over them, and they used to consult him ﷺ and discuss with him ﷺ. It is narrated from Umar b. Al-Khattab (ra) that he said

"وَاللَّهِ إِنْ كُنَّا فِي الْجَاهِلِيَّةِ مَا نَعُدُّ لِلنِّسَاءِ أَمْرًا حَتَّى أَنْزَلَ اللَّهُ فِيهِنَّ مَا أَنْزَلَ وَقَسَمَ لَهُنَّ مَا قَسَمَ، قَالَ: فَبَيَّنَّا أَنَا فِي أَمْرِ أَتَأْمُرُهُ إِذْ قَالَتِ امْرَأَتِي: لَوْ صَنَعْتَ كَذَا وَكَذَا، قَالَ: فَقُلْتُ لَهَا: مَا لَكَ وَلِمَا هَا هُنَا؟ وَفِيمَ تَكُلُّكِ فِي أَمْرِ أُرِيدُهُ؟ فَقَالَتْ لِي: عَجَبًا لَكَ يَا ابْنَ الْخَطَّابِ، مَا تُرِيدُ أَنْ تُرَاجَعَ أَنْتَ وَإِنَّ ابْنَتَكَ لَتُرَاجِعُ رَسُولَ اللَّهِ ﷺ حَتَّى يَظَلَ يَوْمُهُ غَضَبَانٍ، فَقَامَ غَمْرٌ فَأَخَذَ رِدَاءَهُ مَكَانَهُ حَتَّى دَخَلَ عَلَى حَفْصَةَ، فَقَالَ لَهَا: يَا بُنَيَّةُ، إِنَّكَ لَتُرَاجِعِينَ رَسُولَ اللَّهِ ﷺ حَتَّى يَظَلَ يَوْمُهُ غَضَبَانٍ؟ فَقَالَتْ حَفْصَةُ: وَاللَّهِ إِنَّا لَتُرَاجِعُهُ، فَقُلْتُ: تَعْلَمِينَ أَنِّي أُحَذِّرُكَ عُقُوبَةَ اللَّهِ وَعَظَبَ رَسُولِهِ"

“By Allah, in Jahiliyyah we never used to take account of our women in any issue, until Allah revealed whatever He has regarding them, and apportioned for them what has been apportioned, so while I was thinking over an issue my wife said to me: ‘If only you did such and such’. So I replied to her ‘What

business is it of yours, and why are you talking about an issue that I am dealing with?’ Then she said to me: ‘How strange it is to you O Ibn Al-Khattab, that you don’t want anyone to answer you back, and your daughter answers back to the Messenger of Allah until he spends the whole day angry’. So Umar (ra) said “I gathered my cloak and left my place until I reached Hafsa, and I said to her: ‘O my daughter, you answer back to the Messenger of Allah until he spends his day angry?’ She replied: ‘By Allah, we do answer back to him’ Then I said ‘You know that I warn you about the punishment of Allah and the anger of His Messenger.” And it is narrated from Anas that he said

«أَهْدَتْ بَعْضُ أَزْوَاجِ النَّبِيِّ ﷺ إِلَى النَّبِيِّ ﷺ طَعَامًا فِي قَصْعَةٍ، فَضَرَبَتْ عَائِشَةُ الْقَصْعَةَ بِيَدِهَا فَأَلْقَتْ مَا فِيهَا، فَقَالَ النَّبِيُّ ﷺ طَعَامٌ بِطَعَامٍ وَإِنَاءٌ بِإِنَاءٍ»

*“I gave some of the wives of the Prophet ﷺ food in a bowl, then 'Aisha knocked the bowl with her hand and so whatever was in it fell out, and the Prophet ﷺ said ‘Food for food and container for container” (reported by Al-Tirmidhi and he said it is *Hasan Sahih*).*

These narrations indicate that the guardianship of the Messenger ﷺ over his wives was one of care and not one of rule, and so they were like companions to him and not subjects, as indicated by his relationship with them being one of companionship.

Allah (swt) has made it obligatory for the woman to obey her husband and has prohibited her from disobedience; He (swt) said

﴿وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَأَضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ﴾

“But those [wives] from whom you fear arrogance(ill-conduct) - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them .” (TMQ 4:34). And the husband has been obliged to pay for her maintenance; Allah (swt) said,

﴿لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ ۖ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا ءَاتَاهُ

اللَّهُ

“Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him.” (TMQ 65:7). The Prophet ﷺ said

«أَلَا إِنَّ لَكُمْ عَلَى نِسَائِكُمْ حَقًّا وَلِنِسَائِكُمْ عَلَيْكُمْ حَقًّا، فَأَمَّا حَقُّكُمْ عَلَى نِسَائِكُمْ فَلَا يُوطِئَنَّ فُرُشَكُمْ مَن تَكْرَهُونَ، وَلَا يَأْذَنَنَّ فِي بُيُوتِكُمْ لِمَن تَكْرَهُونَ، أَلَا وَحَقُّهُنَّ عَلَيْكُمْ أَنْ تُحَسِّنُوا إِلَيْهِنَّ فِي كِسْوَتِهِنَّ وَطَعَامِهِنَّ»

“You have right over your women, and your women have right over you. As for your right over your women, they should not allow anyone you dislike to treat on your bedding (furniture), nor permit anyone you do not like into your home. Their right over you is to treat them well in clothing them and feeding them.” (reported by Al-Tirmidhi from Ibn Al-Ahwas from his father). In the narration of Muslim from Jabir:

«وَلَكُمْ عَلَيْهِنَّ أَنْ لَا يُوطِئَنَّ فُرُشَكُمْ أَحَدًا تَكْرَهُونَهُ ... وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ»

“you have right over them, and that they should not allow anyone to sit on your bed (furniture) whom you do not like...Their rights upon you are that you should provide them with food and clothing according to what is reasonable”, and it is narrated that Hind came to the Messenger of Allah ﷺ and said:

«يَا رَسُولَ اللَّهِ، إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيحٌ، وَلَيْسَ يُعْطِينِي مَا يَكْفِينِي وَوَلَدِي إِلَّا مَا أَخَذْتُ مِنْهُ وَهُوَ لَا يَعْلَمُ، فَقَالَ: خُذِي مَا يَكْفِيكَ وَوَلَدَكَ بِالْمَعْرُوفِ»

“O Messenger of Allah, Abu Sufyan is a stingy man and doesn’t give me and my child adequate provisions for maintenance except what I take from him without his knowledge” and so he ﷺ replied ***“Take whatever is sufficient for you and your child that is reasonable”*** (agreed upon narration from 'Aisha). Accordingly, these are the evidences for this article.

Article 121

The married couple must fully assist each other in the housework, and the husband must carry out all the work which is usually undertaken outside the house, while the wife carries out all the work which is usually undertaken inside the house, according to her capability. He must provide her with a servant as required to assist with the tasks that she is unable to carry out alone.

The evidence for this article are the actions and words of the Messenger ﷺ, since he ﷺ

«قَضَى عَلَى ابْنَتِهِ فَاطِمَةَ بِخِدْمَةِ الْبَيْتِ. وَعَلَى عَلِيٍّ مَا كَانَ خَارِجَ الْبَيْتِ»

“rules that his daughter Fatimah discharges housework, and ‘Ali with the outdoor work” reported by Ibn Abi Shaybah from Damrah b. Habib, and although Abu Bakr Bin Maryam Al-Ghassani is in the chain of the narration, Abu Hanifah took it and Ibn Hajar said regarding it in *Al-Fateh* “that was deduced from the narration of ‘Ali b. Abi Talib that when Fatima came to the Prophet and asked him for a servant he indicated to her to what should be said when you go to bed”. And the narration that Al-Bukhari reported from ‘Ali b. Abi Talib (ra),

«أَنَّ فَاطِمَةَ عَلَيْهَا السَّلَامُ أَتَتْ النَّبِيَّ ﷺ تَسْأَلُهُ خَادِمًا فَقَالَ: أَلَا أُخْبِرُكَ مَا هُوَ خَيْرٌ لَكَ مِنْهُ تُسَبِّحِينَ اللَّهَ عِنْدَ مَنَامِكَ ثَلَاثًا وَثَلَاثِينَ وَتَحْمَدِينَ اللَّهَ ثَلَاثًا وَثَلَاثِينَ وَتُكَبِّرِينَ اللَّهَ أَرْبَعًا وَثَلَاثِينَ ثُمَّ قَالَ سَفِيَانُ إِحْدَاهُنَّ أَرْبَعٌ وَثَلَاثُونَ فَمَا تَرَكْتُهَا بَعْدُ قِيلَ وَلَا لَيْلَةً صَفِيْن قَالَ وَلَا لَيْلَةً صَفِيْن»

“Fatima came to the Prophet asking for a servant. He said, 'May I inform you of something better than that? When you go to bed, recite 'Subhan Allah' thirty three times, 'Al hamduli l-lah' thirty three times, and 'Allahu Akbar' thirty four times. 'All added, 'I have never failed to recite it ever since.' Somebody asked, 'Even on the night of the battle of Siffin?' He said, 'No, even on the night of the battle of Siffin.'”

This indicates the obligation of the wife carrying out the housework, since her request for a servant is an evidence for the heaviness of the housework upon her, and if the housework was not obligatory upon her there would be no indication from the heaviness, since she would not have been obliged to do the housework, and so then there would have been no heaviness and hardship. This indicates that the wife does the housework according to her capability, and if she requires a helper or more then they are provided for her, according to the evidence of Fatimah’s request from the Messenger. And it indicates that the husband undertakes the work outside of the house, and in such a manner they assist each other.

Article 122

Custody of the child is a right and duty upon the mother, irrespective of whether she is a Muslim or not as long as the child needs this care. If the child no longer needs the care, then the situation is examined. If both of the parents are Muslim then the child, whether boy or girl, chooses whomever they would like to live with, and they will join whomever they

choose, irrespective of whether that was the man or woman. If one of them is non-Muslim, then there is no choice between them; and they rather will join the Muslim parent.

The evidence for this article is what was narrated by Abdullah Bin Amr b. Al-‘As:

«أَنَّ امْرَأَةً قَالَتْ: يَا رَسُولَ اللَّهِ، إِنَّ ابْنِي هَذَا كَانَ بَطْنِي لَهُ وَعَاءٌ، وَتَدْيِي لَهُ سِقَاءٌ، وَحَجْرِي لَهُ حِوَاءٌ، وَإِنَّ أَبَاهُ طَلَّقَنِي وَأَرَادَ أَنْ يَنْتَزِعَهُ مِنِّي، فَقَالَ لَهَا رَسُولُ اللَّهِ ﷺ: أَنْتِ أَحَقُّ بِهِ مِمَّا لَمْ تَنْكِحِي»

“A woman said “O Messenger of Allah, this is my son whom my stomach carried, my breast is a water-skin for him, and my lap is a guard for him. His father has divorced me and wants to take him away from me”. So he ﷺ said “You have more right to him as long as you do not remarry”” (reported by Abu Dawud and Al-Hakim who authenticated it, and Al-Dhahabi confirmed it). This indicates that the mother has more right to the child while they still require nursing, since the Messenger ﷺ ruled for her to continue nursing him as long as she was not married, and did not give the child the choice, which indicates that he still required nursing. It is narrated by Ibn Abi Shaybah from Umar (ra) with an authentic chain whose reporters are all trustworthy that he divorced Umm ‘Asim, then came to her while ‘Asim was in her lap, and wanted to take him from her. The two of them argued until the young boy began crying, and so they went to Abu Bakr as-Siddiq (ra) who said ***“Her touch, lap and smell are better for him than you, until he grows up and then can choose for himself”***. Accordingly the young child who still needs nursing remains the mother’s right and it is obligatory upon her and similarly upon her mother and grandmother, and upon every women from those who have the right of custody.

When the child becomes older, such that they are above the age of nursing which is by confirming whether he can do

without it or not – which differs between children depending upon their circumstances – so a boy may not require it and he was five years old, and another when they were younger or older, and should be according to an expert’s opinion. Based upon that, if they were not reliant upon nursing they are given the choice between the parents; Abu Hurayrah reported

«أَنَّ النَّبِيَّ ﷺ خَيَّرَ غُلَامًا بَيْنَ أَبِيهِ وَأُمِّهِ»

“The Prophet gave a boy the choice between his mother and father” (reported by Ahmad and Al-Tirmidhi who authenticated it). And Abu Dawud reported a narration from Abu Hurayrah that Ibn Hibban authenticated:

«... أَنِّي سَمِعْتُ امْرَأَةً جَاءَتْ إِلَى رَسُولِ اللَّهِ ﷺ وَأَنَا قَاعِدٌ عِنْدَهُ فَقَالَتْ: يَا رَسُولَ اللَّهِ، إِنَّ زَوْجِي يُرِيدُ أَنْ يَذْهَبَ بِابْنِي وَقَدْ سَقَانِي مِنْ بئرِ أَبِي عِنَبَةَ وَقَدْ نَفَعَنِي، فَقَالَ رَسُولُ اللَّهِ ﷺ: ... هَذَا أَبُوكَ وَهَذِهِ أُمُّكَ فَخُذْ يَدَ أَيِّهِمَا شِئْتَ، فَأَخَذَ يَدَ أُمِّهِ فَأَنْطَلَقَتْ بِهِ»

“While I was sitting with the Prophet a woman came and said: O Messenger of Allah, my husband wants to take my son, and he brings me water from the well of Abu ‘Inaba, and helps me, and so the Prophet said...This is your father and this is your mother, so take the hand of whichever of the two you wish. So he took the hand of his mother and so she left with him.”

These evidences indicate that once the child, whether boy or girl, reaches the age that they no longer require suckling and nursing, they are given the choice between their mother and father, irrespective of whether they were three years old or more as long as they no longer required nursing. If they still required nursing then the ruling is given in favour of the mother and the child is not given any choice.

However, if the women, such as the mother, was a disbeliever and requested to nurse her child, then if they were lower than the age of suckling or requiring nursing then the child is ruled in her favour in the same way as the Muslim woman, with no difference between them due to the generality of the narration

«أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي»

“You have more right to him as long as you do not remarry”. As for when the child is above the age of nursing, such that they are at the age or above the age they no longer need to be suckled, and no longer require nursing, then the child is not given the choice but rather is given to the Muslim parent. If the wife was the Muslim then the child would be given to her and if the husband was the Muslim then the child would be given to him, due to His (swt) words

﴿وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا﴾

“And never will Allah give the disbelievers over the believers a way [to overcome them].” (TMQ 4:141), and custody gives the custodian a way over the Muslim. Also due to his ﷺ words

«الْإِسْلَامُ يَغْلُو وَلَا يُغْلَى»

“Islam is above and nothing is made above it”, reported by Al-Daraqutni from ‘Aith Al-Mazni with a *Hasan* chain, and the custodian is above the child. Keeping the child under the custody of the disbeliever who will teach them disbelief is not allowed, and for that reason the child is taken from them.

As for what was narrated by Abu Dawud from ‘Abd alHamid b. Ja‘far from his father from his grandfather Rafi‘ b. Sinan that

«أَنَّهُ أَسْلَمَ، وَأَبَتْ امْرَأَتُهُ أَنْ تُسْلِمَ، فَأَتَتْ النَّبِيَّ ﷺ فَقَالَتْ: ابْنَتِي، وَهِيَ فَطِيمٌ
أَوْ شَبَهُهُ، وَقَالَ رَافِعٌ: ابْنَتِي، قَالَ لَهُ النَّبِيُّ ﷺ: اقْعُدْ نَاحِيَةً، وَقَالَ لَهَا: اقْعُدِي
نَاحِيَةً، قَالَ: وَأَقْعُدِ الصَّبِيَّةَ بَيْنَهُمَا، ثُمَّ قَالَ: ادْعُوَاهَا، فَمَالَتِ الصَّبِيَّةُ إِلَى أُمِّهَا، فَقَالَ
النَّبِيُّ ﷺ: اللَّهُمَّ اهْدِهَا، فَمَالَتِ الصَّبِيَّةُ إِلَى أَبِيهَا فَأَخَذَهَا»

“he embraced Islam, and his wife refused to do likewise and so she went to the Prophet ﷺ and said “She is my daughter. She has finished breastfeeding or is about to”. Rafi’ said “She is my daughter”. The Prophet ﷺ said to him sit on one side, and told his wife to sit on the other. He ﷺ then said “Call her”, and the girl inclined to her mother. The Prophet ﷺ then said “O Allah, guide her”, and then she inclined to her father, and so he took her”. This narration is authenticated by Al-Hakim and Al-Dhahabi agreed with him, and Al-Daraqutni mentioned that the girl’s name was Umayra. Ahmed and Al-Nasa’i both narrated this narration with a different chain, Al-Nasa’i narrated from ‘Abd Al-Hamid b. Ja’far Al-Ansari from his grandfather

«أَنَّهُ أَسْلَمَ، وَأَبَتْ امْرَأَتُهُ أَنْ تُسْلِمَ، فَجَاءَ ابْنٌ لَهُمَا صَغِيرٌ لَمْ يَبْلُغِ الْحُلُمَ،
فَاجْلَسَ النَّبِيُّ ﷺ الْأَبَ هَا هُنَا وَالْأُمَّ هَا هُنَا، ثُمَّ خَيَّرَهُ فَقَالَ: اللَّهُمَّ اهْدِهِ، فَذَهَبَ إِلَى
أَبِيهِ»

“that his grandfather embraced Islam, while his wife refused. Thier young son who has not reached puberty yet came. The Prophet ﷺ sat the father in one place and the mother at another, and then gave the young boy the choice and said “O Allah guide him”, and so he went to his father”. Ibn Jawzi mentions that between the two chains of narrations the chain that mentions that it was a boy is the more correct.

The Messenger ﷺ was not content with what the child had chosen, rather he prayed for him and so he chose his Muslim

father, or in other words, the child was given to the Muslim of the two parents.